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Dock work

Social repercussions of new methods of cargo handling

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of Conventions and Recommendations

General Survey of the reports concerning the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973

Report of the Committee of Experts on the Application
of Conventions and Recommendations
(articles 19, 22 and 35 of the Constitution)

Dock Work

Social repercussions of new methods of cargo handling

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INTRODUCTION

1. Background to the survey

1. In accordance with article 19, paragraph 5(e), of the Constitution of the International Labour Organization, the Governing Body of the International Labour Office decided, at its 273rd Session (November 1998), to invite the governments of member States which have not ratified the Dock Work Convention, 1973 (No. 137), to submit a report on national law and practice in regard to the matters dealt with in this instrument. By the same decision, and in accordance with article 19, paragraph 6(d), of the Constitution, the governments of all member States were invited to submit a report on the law and practice in their countries in regard to the matters dealt with in the Dock Work Recommendation, 1973 (No. 145). On the basis of the reports supplied in application of that decision and those submitted under articles 22 and 35 of the Constitution by the governments of States which have ratified the Convention, the Committee carried out its first General Survey on the effect given in law and practice to the instruments under consideration.

2. Historical background

2. The International Labour Organization (ILO) has regularly directed its attention to the special situation of dockworkers. Throughout its history, the International Labour Conference (ILC) has adopted various Conventions and Recommendations relating to their safety and health. In addition, many other ILO instruments, especially those concerning work in industrial enterprises (including ports) apply to dockworkers in the same way as to other workers. The ILC examined matters relating to dockworkers for the first time in 1929, and again in 1932, when instruments on the prevention of accidents to workers engaged in loading and unloading ships were adopted. [1] Subsequently, the ILO's Inland Transport Committee specifically examined the problems of the regularization of employment (1949), welfare (1954) and the organization of

[1] The Protection against Accidents (Dockers) Convention, 1929 (No. 28), and the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32).

dock work (1957). [2] For each of these issues, the Inland Transport Committee adopted resolutions and conclusions which provided useful guidance for governments, port authorities, employers and trade unions.

3. The port industry has been subject to profound changes since the Second World War. New cargo-handling methods have accelerated port operations, reduced the cost of loading and unloading goods, accelerated the turnround time of ships in ports and reduced the physical effort involved in handling cargo. However, through the increased use of machinery, these methods have led to major reductions in the labour force needed for such operations. Moreover, in view of the casual nature of the work and the situation created by the introduction of new handling methods, it was necessary to try to provide dockworkers with regular work, or at least to establish a system of allocating work that could give them sufficient guarantees of employment and income. For that purpose, it was considered necessary to create a system for the registration of dockworkers and to control the flow of new entrants to the trade.

4. In accordance with a resolution adopted by the Inland Transport Committee at its Eighth Session (1966), the Governing Body decided to convene a Tripartite Technical Meeting on Dock Work to undertake a global examination of the various aspects of dockworkers' employment and work. That Meeting, held in Rotterdam in April 1969, examined in particular the question of the social repercussions of introducing unitization systems, with special reference to the regularization of employment and stabilization of earnings. [3] The Tripartite Meeting emphasized the need to ensure that dockworkers benefited from the advantages of the new handling methods and to take steps to help them to overcome the social problems inevitably linked to reductions in the workforce.

5. On that occasion, the Worker participants argued that regular full-time employment for dockworkers must be a basic objective and exceptions should only be allowed where justified by the particular conditions pertaining in a given country or port. The shortcomings of dock work were a result of its temporary nature, which needed to be resolved in order to improve human relations and increase productivity in ports. The Employer participants also conceded the need

[2] The Inland Transport Committee was one of seven tripartite industrial committees set up by the ILO Governing Body at its 94th Session (January 1945). Its task was to deal with interregional problems relating to inland transport and to be a forum for the exchange of views on the situation of the transport industries, particularly in the countries devastated by the war. Inland transport should be understood to mean transport by inland waterways, rail and road or, indeed, air transport. The other committees set up concerned the following industries: coalmines, iron and steel, metal trades, textiles, petroleum, building, civil engineering and public works. See ILO: *Minutes of the 94th Session of the Governing Body*, London, 25-31 January 1945.

[3] The agenda of the Tripartite Meeting on Dock Work also included the following: vocational training and retraining of dockworkers (TMDL/1969/2); safety, health and welfare of dockworkers (TMDL/1969/3).

to regularize dockworkers' employment. The Meeting discussed the respective roles of governments and employers' and workers' organizations in adopting and implementing social measures to avoid the adverse consequences of introducing new cargo-handling methods. It considered that each country should be free to adopt the practices most suited to its own situation. The outcome to the discussions resulted in the Meeting adopting conclusions concerning the effect of changes in cargo-handling methods in ports, the regularization of employment and incomes, industrial relations, improvements in work efficiency and dockworkers' conditions of work and living standards. The Meeting especially recommended that the question of the social repercussions should be included as a matter of urgency on the agenda of the next session of the International Labour Conference with a view to the adoption of an international instrument.

6. On the strength of this recommendation, the Governing Body included the item on the agenda of the 57th Session of the International Labour Conference (1972). For that purpose, the Office invited governments to make general observations on the question. Based on the replies received, it suggested in its proposed conclusions to the Conference that the international instrument should take the form of a Recommendation, a type of instrument that would better take account of differences in national situations. A small number of governments were in favour of a Convention, which would be better able to protect dockworkers' interests. [4] During the discussions, all the parties agreed on the speed of the changes which had occurred in cargo-handling methods since the 1969 Tripartite Meeting, particularly with the development of new modes of maritime transport through the emergence of unitization systems, highly mechanized bulk operations, the expansion of container transport, the widespread adoption of "roll-on/roll-off" trans-shipment and the growing number of LASH (lighter aboard ship) carriers. They also noted a steady development in cargo-handling methods as a result of the introduction of palletization and the mechanization of cargo loading and unloading operations, which had become almost integral to some port operations. All of these unavoidable changes added to the decline in employment opportunities for dockworkers. The need for discussion of these social repercussions was all the more urgent in that maritime transport and handling services were particularly vulnerable to international fluctuations and the problems involved therefore required international consultation and action. Drawing on the conclusions of the 1969 Tripartite Meeting, the Conference adopted conclusions which in its view seemed best to reflect the "balance between acceptance of new modes of

[4] *Bulgaria, Guatemala, Italy* and *Spain. Sweden* indicated that it did not wish to exclude the possibility at a later stage of including some important provisions in a Convention. ILC, 57th Session, 1972, Report V(2), pp. 11-13.

operation and technology and altered work operations, with the necessary guarantees for job security, including regular and/or permanent employment and earnings". [5]

7. However, at the conclusion of the discussions, and despite agreement on all sides concerning the basic principles that it should set forth, the different groups could not reach agreement on the form of the international instrument. The Worker members were resolutely in favour of a Convention establishing the general principles, supplemented by a Recommendation expanding on those principles and indicating all the measures necessary to put them into practice. The Government members were split on this proposal. [6] A majority indicated that it would be better to agree on a Recommendation because a sufficiently flexible instrument was needed, while some accepted the idea of two instruments. The Employer members opposed the adoption of two instruments on the grounds that it consisted of a temporary adjustment that concerned only one category of worker, which although important, was only a minority of the world's workers. In their view, it would not be right to give the instrument in question the same status as other instruments of universal application adopted by the Conference on subjects of capital importance for workers' protection. Following extended discussions, conclusions proposing the adoption of a Convention supplemented by a Recommendation were finally adopted at the first discussion by the Conference, despite the abstention of the Employers' group when the Conference voted on the Committee's report.

8. However, when the draft international instruments were examined at the 58th Session of the International Labour Conference (1973), the Employers took into account the fact that a majority was in favour of the idea of adopting two texts and indicated very early on that they were ready to accept a Convention supplemented by a Recommendation, provided that the Convention was flexible enough to apply to the differing conditions in countries depending on their stage of development. The other two parties indicated that they too were aware of the wide diversity of national needs. The Conference recognized the rapid development of new modes of maritime transport intended to cater for the growth in cargo traffic at sea. Unitization systems and the mechanization of loading operations had changed the design of ships, including container ships, giant tankers and bulk carriers. "Unitization" is a term that designates "the combining of goods in individual packages into large units which can be handled as one, with the consequent economies flowing from speedier operation at all

[5] Presentation of the Report of the Committee on Dock Labour by its Reporter, ILC, 57th Session, 1972, *Record of Proceedings*, p. 643.

[6] See ILC, 57th Session, 1972, *Record of Proceedings*, pp. 647-648.

stages of movement". [7] The principal form of this method, apart from containerization, consists of encasing packages to make loads that can easily be handled by forklift trucks. Unitization is highly suited to simple cargo handling and relatively well-suited to other types of transport. Port installations and facilities had been modified or replaced to take account of the new requirements, help reduce the turnround time of ships in port and ensure the rapid unloading and transport of ever heavier cargos. These changes were not unexpected, but they had created problems affecting dockworkers' employment, the structure of the profession and the responsibilities for its organization. However, in some countries, they had led to the achievement of some very longstanding objectives, such as the regularization of dockworkers' employment. The two draft instruments, supported by the three groups with only a few exceptions, were the first dealing with dockworkers since the adoption of Convention No. 32 in 1932. The Conference adopted them by a very large majority and no votes against. [8]

3. Content of the instruments

9. The objectives of the instruments are clearly set out in their Preambles. Taking into account the changes which had occurred in cargo-handling methods, the social and economic advantages that would probably ensue for the country concerned, the repercussions on the organization of dock work and considering that the advantages of these new cargo-handling methods should be of greater benefit to workers, the two instruments prescribe the adoption of provisions to encourage the regularization of work and the stabilization of incomes and other measures related to the conditions of work and living standards of those concerned, as well as occupational safety and health in ports. The two instruments apply to "persons who are regularly available for work as dockworkers and who depend on their work as such for their main annual income". They recognize the diversity of situations and responsibilities in the various countries and ports and leave it to national legislation or practice to designate the persons and activities covered by the definition of dockworkers and dock work. In order to facilitate the definition, the provisions envisage the consultation of employers' and workers' representative organizations *(Article 1 of the Convention; Paragraphs 1 and 2 of the Recommendation).*

[7] Sir Andrew Crichton: *The unitisation concept*, paper submitted to the United Nations Interregional Seminar on Containerization and Other Unitized Methods for the Intermodal Movement of Freight, May 1967.

[8] The Convention was adopted by 338 votes for and none against, with 24 abstentions. The Recommendation was adopted by 328 votes for and none against, with 16 abstentions. ILC, 58th Session, 1973, *Record of Proceedings*, pp. 683, 687-690.

10. According to the general principles contained in the Convention, it is for national policy to encourage all concerned to provide permanent or regular employment for dockworkers in so far as practicable, as well as minimum periods of employment or a minimum income, depending on the economic and social situation of the country and port concerned *(Article 2)*. For that purpose, registers have to be established and registered dockworkers must be required to be available for work in a manner to be determined by national law or practice *(Article 3)*. The strength of the registers must be periodically reviewed to take account of the needs of the port, and any reduction in the strength of the register has to be accompanied by the measures necessary to prevent or minimize the detrimental effects on dockworkers *(Article 4)*. In order to secure the greatest social advantage of new methods of cargo handling, national policy must encourage cooperation between employers' and workers' representative organizations in improving the efficiency of work in ports, with the participation, as appropriate, of the competent authorities *(Article 5)*. Members must ensure that appropriate safety, health, welfare and vocational training provisions apply to dockworkers *(Article 6)*. Finally, except in so far as they are otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, the provisions of the Convention must be given effect by laws or regulations *(Article 7)*.

11. The general principles set out in the Convention are also contained in the Recommendation, which provides much more detail in all respects. The Preamble to the Recommendation particularly emphasizes the lasting improvement of the situation of dockworkers in the light of changes in cargo-handling methods. A mechanism should be established between the social partners to examine the immediate and future impact that the new cargo-handling methods may have on the workforce *(Paragraphs 3-6)*. Regular or permanent employment of dockworkers should be achieved in accordance with detailed provisions on the establishment of registers *(Paragraphs 11-16)*, the adjustment of the strength of the registers *(Paragraphs 17-19)* or systems for the allocation of work where dockworkers do not have permanent or regular employment with a particular employer *(Paragraphs 20-22)*. The Recommendation also recognizes the importance of joint consultative machinery, aimed not merely at the settlement of current issues relating to conditions of work, but at an overall arrangement encompassing the various social measures required to meet the impact of new methods of cargo handling *(Paragraphs 23-27)*. In order to improve the efficiency of work in ports and secure the greatest social advantage of new methods of cargo handling, agreements should be concluded between employers and workers with the participation of the representatives of governments on the use of scientific knowledge and techniques concerning the work environment. Such agreements should include, for example, increased flexibility in the deployment of dock

labour, the strength of gangs or shift work *(Paragraphs 28-30)*. There are also provisions for the improvement not only of dockworkers' conditions of work, but also their living standards. These provisions concern safety, health, welfare and vocational training, hours of work, weekly rest, holidays with pay and shift work in gangs *(Paragraphs 31-35)*. Finally, it is envisaged that appropriate provisions should be applied to occasional and to seasonal dockworkers in accordance with national law and practice *(Paragraph 36)*.

12. It is clear from the above that Convention No. 137 and Recommendation No. 145 were designed to establish minimum standards of social protection applicable to all countries, irrespective of their level of development, economic structure and social infrastructure. It should therefore be borne in mind that these instruments were inspired by the concern to allow member States great flexibility.

4. The continuing development of the port industry

13. Since the adoption of the Convention and the Recommendation in 1973, the social and economic environment which gave rise to them has changed greatly. The first major change was the widespread adoption of the new cargo-handling methods, especially unitization systems, throughout the world's ports. These systems not only revolutionized the organization of the port industry in most countries, but also the international transport of goods in general. Containerization, for example, originally a purely technical cargo-handling method, has had a decisive impact on the design and size of ships, their arrangement, equipment, installations, operations and employment in ports, and the skills of dock labour. For shipowners, the system offers several important advantages compared with traditional cargo-handling methods. The risk of damage to cargo is reduced. Therefore claims and cargo insurance costs are also lower. The main advantage of containerization, however, is the reduction in the time spent by ships in port and in the related labour costs. As a result of the reliability and greater precision of cargo-handling operations, ships have been able to reduce to a few hours or days the time spent in port. The reduction in the time spent in port and the consequent increase in the time that ships are at sea, and therefore generating income, has led to the replacement of the old general purpose cargo ships by much larger and faster container ships. The latter, which are becoming ever bigger, can take advantage of the resulting economies of scale.

14. The new cargo-handling techniques have had an equally profound impact on dock labour. The major investment required to equip regular lines and the need to maximize the use of the available facilities have increased the pressure on ports to further improve their operational efficiency. In its efforts to adjust to the new situation, the port industry has also become a more capital-intensive sector requiring massive investment in cargo-handling facilities and the

training, or retraining, of dockworkers. One of the features of the modernization of port facilities is therefore the substitution of capital investment for employment of labour, resulting in considerable reductions in the workforce, paralleled by substantial increases in labour productivity. Greater precision in the scheduling of ships' movements makes it much easier to forecast the required workforce. To some extent, this reduces the need to use casual dock labour and has allowed the progressive registration of dockworkers. In some respects, registration has also been rendered necessary by the fact that dockworkers must have appropriate training and experience to be able to operate ever more costly equipment safely and efficiently. The registration of dockworkers, their permanent employment and the stability of their income are further new elements that have contributed to the improvement of conditions of work in ports and the enhancement of the socio-economic status of the sector.

15. While the industrialized countries of the North Atlantic and the Pacific Ocean, where the bulk of cargo transport occurs, have judged it profitable to invest in modern cargo-handling techniques, a large number of developing countries have hesitated, for various reasons, to adopt these highly capital-intensive methods. In many cases, there was a lack of financing. The intensive capital investment required by regular maritime transport and operating agreements between shipowners which have been imposed on the sector in the form of consortia and similar types of cooperation have certainly hindered the plans of many developing countries that were contemplating more active participation in such regular transport operations. Many developing countries are very well aware that the efficiency of their national ports is of great importance in facilitating international trade and therefore plays a crucial role in their economic development. The growth in the volume, sophistication and intensity of capital investment which characterizes the major shipping lines has resulted in the retention of only a small number of trans-shipment ports and distribution hubs. The trans-shipment ports, all located in the industrialized countries in an East-West shipping corridor, have become the nerve centres of international shipping. Some developing countries have set about converting their ports into distribution hubs. But there is stiff competition with other regional ports with the same ambitions.

16. Nowadays, the situation in the international maritime transport and port industry is characterized by the creation of integrated global chains, mergers and alliances of maritime carriers. The technical ability to build large vessels has led to huge ships operating from an ever smaller number of ports. Companies operate as oligopolies through global alliances. [9] All these technological and economic changes are contributing to the radical modification of the port environment. By rationalizing their services around principal and secondary

[9] See, for example, the merger of Maersk-SeaLand.

ports, shipowners have formed networks of ports. Some are engaged in creating a network of dedicated terminals so as to improve operational productivity. [10] However, "mature" port areas, such as those in northern Europe, offer less room for the strategies of shipowners or port operators than ports at the "take-off stage" in developing countries, which are prime targets for the development of specialized ports capable of meeting the requirements of a particular operator or shipowner. Investment in such cases is driven by a dual rationale. On the one hand, shipowners rationalize their services around principal and secondary ports. On the other, international cargo-handling groups are being formed, integrated with global terminal operators. [11]

17. At the instigation of shipping groups, port operators have become global players, established simultaneously in several countries as a result of direct investment, alliances or technical assistance activities. Ports are active components in the organization of the international transport network. Inspired by *Singapore*, currently the leading world port in terms of cargo transit, major terminal operators and some ports are now formulating international development strategies. The trend is therefore characterized by the pursuit of increased market share instead of maintaining acquired positions, to such an extent that small ports, reduced to feeder ports, are increasingly being driven to seek strategic partners as a means of entering or forming regional or global alliances, and thereby avoiding continued isolation. Some terminal operators have no hesitation in predicting a future where ports or port terminal operators will be able to negotiate "global" service contracts with shipowners, who would then give preference to the port platforms of a single operator established in different parts of the world. Port development strategies now show two characteristics: the internationalization of activities, as indicated above, and diversification in the trades related to cargo handling. Indeed, to differing degrees, all maritime operators are diversifying into related activities which bring additional revenue or which are complementary in operational terms. For example, shipowners are developing transit activities in conjunction with their main activity as carriers. Sometimes they create their own port terminals. [12] The diversification of cargo-handlers focuses on logistical services. Furthermore, there is a trend towards reducing intermediaries between cargo-handlers and shipowners, at the behest of the handlers who are increasingly seeking a single contact able to provide a package of logistical services. Aware of their key

[10] This is the strategy followed, for example, by Maersk-SeaLand on East-West routes and by MSC on North-South routes.

[11] For example: through its many holdings, Hutchinson Port Holdings (17 terminals worldwide in 1999) increased its cargo handling from 4 million Twenty-Foot Equivalent Units (TEU) in 1991 to almost 14 million in 1999, or nearly 10 per cent of world container traffic.

[12] For example: Maersk with its port hub in Algeciras (Spain) or Contship with its Gioiao Tauro terminal.

position as the main interface between the different modes of transport, handlers are exploiting this advantage by diversifying their activities along the transport chain. [13]

18. There is no doubt that all these profound changes are bound to have an impact both on employment trends in the sector and on individual conditions of work.

5. The instruments on dock work and the Working Party on Policy regarding the Revision of Standards

19. Following the discussions on standard-setting policy at the 82nd Session of the ILC (1994), on the occasion of the 75th anniversary of the ILO, the Governing Body of the ILO, at its 262nd Session (March-April 1995), approved the creation of a Working Party on Policy regarding the Revision of Standards within the Committee on Legal Issues and International Labour Standards (LILS). The mandate of the Working Party includes assessing actual needs for revision, examining the criteria to be used in revising standards and analysing the difficulties and inadequacies of the standards system, with a view to proposing effective practical measures to remedy the situation. The Working Party has conducted a case-by-case examination of Conventions and Recommendations and has formulated a number of recommendations, which have been unanimously approved by the LILS Committee and the Governing Body. To date, its work has resulted in decisions by the Governing Body concerning 181 Conventions and 191 Recommendations, recommending the Office and member States to take a series of measures. [14]

20. For the fifth meeting of the Working Party (November 1997), the Office prepared a document in which 21 Conventions, including Convention No. 137, were examined with a view to deciding on the possible need for their revision. [15] The Office drew attention to the fact that Convention No. 137 had been included among the instruments to be promoted as a priority by the Ventejol working parties in 1979 and 1987. [16] It also referred to the discussions in the two Tripartite Meetings organized by the ILO in 1995 and 1996 [17] on the

[13] Institut Supérieur d'Economie Maritime (ISEMAR): *Les ports de la quatrième génération*, note de synthèse No. 1, Oct. 1997.

[14] See doc. GB.282/LILS/WP/PRS/1.

[15] See doc. GB.270/LILS/WP/PRS/2, pp. 30-31.

[16] See on this subject: Final Report of the Working Party on International Labour Standards, *Official Bulletin*, Special Issue, Series A, Vol. LXII, 1979; and Report of the Working Party on International Labour Standards, *Official Bulletin*, Special Issue, Series A, Vol. LXX, 1987.

[17] The ILO Tripartite Seminar on the Social and Labour Effects of Structural Adjustment in the Port Industry of Selected Asian and Pacific Countries, Pattaya (Thailand), 1995, and the

social and labour problems caused by structural adjustments in the port industry following the development of new cargo-handling methods and other economic changes of a general nature. Widely divergent opinions on the relevance of the Convention were expressed at the 1996 Meeting. The Workers' representatives insisted on the need to promote the ratification of the Convention, while the Employers' representatives maintained that "... Convention No. 137 was obsolete as it did not respond to the modern needs of the port industry". [18] The Meeting finally adopted a resolution referring to the Convention, but only to request the ILO to prepare a survey, as soon as possible, on the difficulties encountered by member States in ratifying and applying it. In these circumstances, the Governing Body approved the Working Party's proposal to maintain the status quo with regard to the Convention and requested the Committee of Experts to undertake a General Survey on its application. [19]

6. Status of ratification

21. The Convention entered into force on 24 July 1975. As at 7 December 2001, 22 Members had ratified it. Appendix II gives details of ratifications by member States and declarations of application to non-metropolitan territories. The Convention has not been denounced by any member State.

7. Information available

22. For the present survey, the Committee had before it, for information, reports submitted by 92 member States in conformity with article 19 of the Constitution. [20] In accordance with its normal practice, it has also made use of the information contained in reports submitted under articles 22 and 35 of the Constitution and has duly taken into consideration the observations of employers' and workers' organizations. The Committee wishes to emphasize the high quality of many of the reports received, but regrets that it did not always have appropriate or sufficient information regarding application in practice of certain provisions of the instruments under consideration. It therefore endeavoured, according to its usual practice, to supplement the information received by referring to legislation, official documents and other appropriate

Tripartite Meeting on the Social and Labour Problems caused by Structural Adjustments in the Port Industry, Geneva, 20-24 May 1996.

[18] Tripartite Meeting on the Social and Labour Problems caused by Structural Adjustments in the Port Industry, Geneva, 20-24 May 1996, *Note on the Proceedings*, TMPI/1996/10, paras. 31-32.

[19] See doc. GB.270/LILS/3(Rev.1), paras. 86-90.

[20] A table listing the reports received is given in Appendix III.

available sources. The Committee also notes that certain member States merely indicated in their reports that they could not give effect to any of the provisions of the instruments under examination in view of their geographical situation.[21] On one particular point, the Committee notes that the report form approved by the Governing Body and sent out to member States contains a question on specific measures taken concerning women dockworkers. However, the Committee observes that no pertinent information was provided on this subject in the reports. Finally, the Committee regrets that only 15 workers' and employers' organizations took the opportunity under article 23 of the ILO Constitution to express their point of view on a subject which had earlier given rise to prolonged discussions and which is now the subject of a General Survey for the first time. [22]

8. Outline of the survey

23. In the first chapter, the Committee traces the technical and economic changes that have occurred in the port sector and their institutional and social repercussions. In the second chapter, it examines the measures adopted by member States to apply the provisions of the instruments under consideration. Difficulties in the application of the instruments and prospects for the ratification of the Convention are the subject of the third chapter. Finally, the Committee makes a number of final remarks by way of conclusion to the survey.

24. In accordance with its usual practice, the Committee makes reference to national situations in the text and in footnotes. Given the large number of countries covered by the survey, these references, which aim to clarify the scope and the provisions of the instruments under consideration, give only the most representative examples and do not claim to encompass all possible cases.

[21] *Burkina Faso*, *Ethiopia*, *Lesotho*, *Luxembourg* and *San Marino*.

[22] *Barbados:* Barbados Employers' Confederation (BEC); *Canada:* Canadian Labour Congress (CLC), Canadian Employers' Council (CEC); *Czech Republic:* Czech-Moravian Confederation of Trade Unions (CM KOS); *Egypt:* Federation of Egyptian Industries; *India:* Paradip Port Dock and Construction Workers' Union; *Japan:* Japanese Trade Union Confederation (JTUC-RENGO); *Republic of Korea:* Korea Employers' Federation (KEF); *Netherlands:* Netherlands Trade Union Confederation (FNV); *New Zealand:* New Zealand Council of Trade Unions (NZCTU); *Portugal:* Confederation of Portuguese Industry (CIP), General Union of Workers (UGT); *Slovenia:* Confederation of New Trade Unions of Slovenia; *Turkey:* Confederation of Turkish Trade Unions (TÜRK-IŞ), Turkish Confederation of Employers' Associations (TISK).

CHAPTER I

THE CONTEXT: CHANGING PORT ACTIVITIES AND EMPLOYMENT OF DOCKWORKERS

25. In this chapter, the Committee examines at length the main contemporary changes in the maritime and port sectors in order to provide a context in which to understand these changes. This discussion allows an assessment to be made of the impact of the changes on dockworkers' work and employment, which are then the subject of the comparative analysis of the law and practice of member States in the following chapters.

26. The Department of International Affairs of the former Port of Singapore Authority (PSA) indicated its intention in an information leaflet of becoming an operator owning port terminals and connected logistical services on an international scale, and of seeking global partnerships for investment, management or consultancy in ports. Its vision included the creation of several networks of platforms and lines around the world, closely linked to a worldwide logistical web, procuring high quality services. On 1 October 1997 the Port of Singapore Authority was transformed into a commercial company (PSA Corporation Ltd.) providing the whole range of logistical services to a port terminal, while its regulatory powers were vested in a Maritime and Port Authority (MPA). The goal of large maritime and port companies today is to create networks of integrated platforms and lines at the global level. This objective involves the development of the commercial activities of ports and is an excellent illustration of the extraordinary changes taking place in the sector.

Section I. Classification of types of port organization

27. For the purposes of clarity, it is proposed to begin by describing in general terms the features of the organization and management of ports, [1] remembering that it may be necessary to adapt the following categories to national or local conditions.

[1] See in particular: ISEMAR, *Synthèse sur le transport maritime – 1997/1998 – les typologies: Un outil d'analyse des ports.*

28. First and foremost, a port may be defined or characterized by several criteria. It is both a frontier and a link between the two worlds of water and land. They are physically totally different and in many cases have different and sometimes specific laws, customs and usages. While international exchanges are the very essence of the sea and river world, the land-based world is marked by the specific features of the laws of each State. Ports are places of intense commercial activity, rest and safety for ships, [2] and natural or man-made shelters where ships can load or unload their cargo. Ports are also places that are equipped to provide a link between water transport and land or air transport. [3]

29. There are probably over 2,000 ports in the world, [4] varying in size from wharves handling at most a few hundred tonnes of cargo a year, to large international ports being true multi-modal hubs in which are concentrated the full range of logistical services, from warehousing to total management of the supply chain, and through which up to 300,000 tonnes of cargo may pass each year. It has also proved very difficult to obtain precise figures concerning the number of dockworkers in specific countries or in the world. Only a few countries have provided in their reports an estimate of the number of dockworkers in their national ports. [5] There are several factors which may explain this lack of statistics, in particular the diversity of methods of defining dockworkers, which may vary from country to country or from one port to another, and also the existence or otherwise of a system of registration or maintenance of statistics.

30. The diversity of types of port management and organization depend primarily on the distribution of functions among the various members of the port community:

- The port authority exercises a power conferred upon it by a public authority and as a minimum takes responsibility for nautical matters, safety and policing. However, the port authority's responsibilities often go beyond these mere regulatory functions and extend to responsibility for the port infrastructure (construction and maintenance) and sometimes for commercial activities, such as cargo handling. In fact, its role covers both the regulation and coordination of the port's activities.
- Port enterprises are another link in the chain of port services. They carry on commercial activities in the port area and provide services to ships and in

[2] G. Maffait: *Notions d'exploitation des ports maritimes de commerce*, ILO, 1970.

[3] See on this subject the paper by R.L.M. Vleugels, Chief of Operations in the port of Anvers, at the 6th Conference of the International Association of Ports and Harbours (IAPH), Melbourne, 1969.

[4] Source: see the web site of the World Bank: home page on ports and logistics.

[5] *Brazil, Finland, France* and *Malta*.

cargo handling. The statutes of port enterprises vary. They are publicly or privately owned companies, cooperatives, associations, etc. They may operate in a competitive or protected environment (for example, because of a monopoly).

- All the operators associated in the common interests of the port form the port community. This community is an important partner for the port authority and is often an instrument of cohesion between parties with sometimes divergent goals.
- The port agglomeration is an even broader constituency which includes the port community, the fabric of companies related to the port and local institutions associated with the economic life of the port. The port agglomeration is above all an economic whole that is essential to the port.

31. The port's activities are organized primarily around the port authority, which is responsible for managing the port area and promoting its development. The following organizational models may be considered: first so-called **operating ports**, where the port authority is the owner of the whole of the port (precinct, infrastructure and equipment) which it exploits itself in part or in its entirety. The port authority provides cargo-handling services either by making its own personnel available to the port's clients, or by organizing the employment of labour in "pools". Secondly, the so-called **tool ports**, where the port authority is the owner of the infrastructure and the cargo handling and storage facilities. It assigns their long-term operation in the form of a concession or on a temporary basis under a hire contract. Normally, only the tools are made available. Thirdly, the so-called **landlord ports**, where the port authority is the owner of the precinct and the infrastructure. It is responsible for developing the port through port companies which are responsible for its equipment and commercial operation. However, it defines the rules governing competition between operators. Even if, as a rule, ports are managed predominantly in one way, there are generally variants.

- In public management, the nature of the owner of public ports may range from national to local institutions. In the case of centralized public management, investment decisions and commercial choices are endorsed by a central supervisory authority. In the case of decentralized public management, the supervisory authority defines the global port policy at the national level, but allows for the involvement of ports at the local or regional levels.
- In private management, the private port is owned mainly by private capital. Such ports are generally owned by individual investors, holding companies or groups.
- Commercial management can be characterized as lying between the latter two forms of management. It favours a pragmatic approach in order to formulate the kind of organization and management best suited to satisfying the needs of the market. It relies on an association of public and

private sectors. This type of association can take many forms, some loose-knit and others more formal. The main ones are management contracts, the leasing of land or equipment and concession contracts.

32. The capital needed to acquire costly equipment, the emergence of the current concept of the single operator, combining the operation of equipment, cargo-handling and dock management services, and the recent development of major operators all tend to favour the "landlord port" model characterized by a clear tendency towards greater private sector participation in port management. In 1999, over 100 ports around the world were the subject of concession contracts between public authorities and private investors. [6] The trend is likely to increase. The various activities in which private sector participation might be envisaged are as follows: port regulation, port ownership and port operation. It is possible to determine the degree of privatization of a port by examining the presence of the private sector in these three activities. A **public port** is one in which there is scarcely any private sector involvement. Public ports can currently be found, for example, in *India, Israel* and some ports in Africa *(Kenya, South Africa)*. In general, when a State undertakes a partial privatization of a port, the first component to be transferred to the private sector is port operations. The regulatory function and port ownership remain in the hands of the public authority. Almost all ports in North America and Europe and, in 1999, nearly 90 per cent of the largest container ports in the world, have been managed under this type of arrangement. [7] *Uruguay* is an example of the **coexistence of public and private ports** in a growing number of countries where ports administered by a public institution coexist with those in which port operations have been assigned to private operators. Examples of **private ports** where the private sector owns the property and controls operations are mostly found in the *United Kingdom* (*Tilbury, Felixstowe, Harwich*, etc.). It is only in the *United Kingdom* (*Southampton, Liverpool, Thamesport*, etc.) and *Chile* that ports are to be found where the private sector is responsible for all three activities, namely regulation, ownership and operations.

Section II. Port reforms

33. The ILO Metal Trades Committee recognized back in 1963 that "in the long run, technological changes bring many benefits. These include higher productivity, particularly through the more effective utilisation of resources, a rising standard of living and stepped-up economic growth. In this context, technological progress should be considered as inevitable, necessary and

[6] Source: see the World Bank's web site: home page on ports and logistics.

[7] See Alfred Baird: *Privatization defined; Is it the universal panacea?*, Napier University, June 1999.

desirable, deserving the support of governments, employers and workers". [8] The Inland Transport Committee also stated that "it is desirable to accept new types of mechanical equipment, whether they are for use on board ship or on the quayside, and new methods of work, when they are efficient, economic and safe". [9] This part of the survey examines the crucial changes that have occurred in cargo-handling techniques and their impact on the development of maritime transport.

A. Contemporary developments

34. For over 40 years, cargo-handling methods in ports have been the subject of far-reaching changes which have spread to all the world's main ports and which will inevitably affect other ports in the coming years. The Committee describes below the cargo-handling method which, as it has developed has, more than any other, raised questions concerning the employment of dockworkers, particularly the use of containers. However, the Committee also mentioned the considerable role played in the development of port activities by the other cargo-handling methods mentioned in the introduction, most of which are used in almost all the world's ports.

35. A useful starting point for the discussion is to briefly review the various categories of cargoes which have to be handled in ports. Firstly, ports must have installations to handle **conventional cargoes**. These include, for example, fresh fruit and vegetables, steel, wood products, cars, etc. The special equipment designed for these types of cargoes are chutes, palette gantries, refrigerated warehouses, etc. Secondly, ports must have lifting gear and storage space for **unit loads**, especially containers. Conventional cargoes and containerized cargoes account for one-third of total traffic in the world's ports. Finally, ports must have, for example, floating cranes, pipelines, large capacity tanks, warehouses equipped to handle **bulk** and wharves with sufficient draught to receive bulk carriers. Bulk means solid products such as coal, iron ore, cereals, fertilizers, etc., and liquid products, such as petroleum products. Bulk traffic accounts for some two-thirds of world traffic through the ports.

[8] ILO, Metal Trades Committee, Seventh Session: conclusions (No. 55) concerning the acceleration of technological progress and its influence on the effective utilisation of manpower and the improvement of workers' income in the metal trades, *Official Bulletin* (Geneva, ILO), Vol. XLVI, No. 1, Jan. 1963, para. 2, p. 100.

[9] ILO, Inland Transport Committee, Sixth Session: resolution (No. 66) concerning methods of improving the organisation of work and output in ports, Geneva, para. 37.

1. The development of containerization

36. While priority is given in the discussion below to the use of containers, this is because of the interest aroused by this method of transport and its wide-ranging consequences. It should not be forgotten that it is only one form of unitization. As noted above, there are other more economical methods, which may be used where ports are not currently equipped to handle containers.

37. Reference is often made to what is commonly called "the container revolution". The method primarily consists of transporting goods to their destination as rapidly and cheaply as possible. It reduces to a minimum the number of cargo-handling operations for each unit of goods. To do this, the goods are packed at the point of origin in a standardized container, which is loaded on a means of transport (road or rail) specially designed to carry it. The container is lifted directly, by a container crane or any other means, on to a container ship. Using procedures similar to those used in the country of origin, the container is unloaded and the goods delivered to one or more consignees in the destination country. It is obvious that under this transport system, cargo handling in the ports entails much less work than traditional cargo-handling methods, which were labour-intensive.

38. In addition to the improvements in port security and the reduced risk of theft, damage and claims in respect of the cargo, the main advantage of containerization for shipowners is the shorter time for which the ship is in port and the reduced cargo handling. The growing sophistication and value of cargoes demanded a reduction in the transit time from the place of origin to the destination, inter alia, by accelerating cargo handling in order to increase the volumes handled by shippers and reduce to a minimum the high costs of storage. This reduction in the time in which ships are in port and the consequent increase in the time spent at sea resulted in the former mixed cargo vessels being replaced by much bigger and faster container ships, which are growing ever bigger, to take advantage of the economies of scale made possible by the reduction in the time the ship is in port.

39. The development of containerization depends not only on the existence of infrastructure and equipment in ports, but also on the good organization of ports, especially concerning customs clearance and document checks. It is therefore essential for all concerned – shippers, shipping companies, and especially the whole port community and port authorities – to be convinced that investment in these will pay. The industrialized countries in the North Atlantic and Pacific Ocean have considered it profitable to invest in containerization. The reduction in costs due to the improvement in the logistical system and the increased reliability and precision of operations related to scheduled maritime transport have allowed companies to cope with the unpredictability of seasonal and economic cycles. In the industrialized countries, many shippers are prepared to bear the increased initial costs associated with the

introduction of containerization, which are small compared with the expected benefits of faster transit times and greater predictability of cargo movements.

40. Containerization developed in the 1960s. It did not, however, become established on all sea routes at the same pace and in the same way. [10] It became established on a massive scale on the most important, mainly East-West, routes that link the industrialized countries before gradually spreading on a case-by-case basis to North-South links in the 1970s and 1980s, as a logical sequel to events on the major East-West routes. Shipowners quickly realized that containerization was not a mere technical change, but a real revolution that could transform their trade through the subsequent development of a multi-modal, door-to-door service. The development of a port, wherever it is located, now inevitably involves the provision of facilities for the handling of containers, which only goes to show the extent to which this method of transporting goods has taken root in the maritime transport industry.

2. Impact of technical progress on shipping links

41. Containerization has strengthened the internationalization of maritime transport. Faced with the powerful shipping groups of North America, which took up containerization very early, and following their example, European shipowners grouped themselves into international consortia. This new organization of maritime trade very quickly became established, after the North Atlantic, in the other two main East-West transoceanic segments, the Transpacific and the Europe-Far East route. In 1980, North America, Europe, the Far East and the South Pacific accounted for 88 per cent of the containers handled in all of the world's ports. However, containerization is progressing on North-South routes. The share of containerized ports grew rapidly at the beginning in Central and South America, the Middle East and Africa, from 1.4 per cent in 1970 to 12 per cent in 1980. A survey of world container streams confirms this preliminary analysis. In 1981, the developed countries accounted for 64 per cent of container streams worldwide, compared with 84 per cent in 1975. At the same time, the share of South-East Asia rose from 4 to 10 per cent, that of the countries of the Middle East from 2.1 to 7.7 per cent and that of other North-South routes from 9.4 to 17.4 per cent. [11]

42. Containerization is also spreading in the developing countries. Its spread can be explained above all by the strategies adopted by shipowners to

[10] See in this connection: Antoine Frémont: *Conteneurisation et tiers monde à travers l'exemple de la Compagnie générale maritime, 1965-1995*, Les cahiers scientifiques du transport, No. 34/1998, pp. 31-52.

[11] Figures taken from statistics prepared by Ocean Shipping Consultants and mentioned in the article "La conteneurisation aux abords de l'an 2000: montée en puissance des pays en émergence", *Journal de la marine marchande*, 5 Nov. 1987, p. 2545.

develop their links. The rapid creation of consortia and efficient container services in a particular area may, in the East-West context, be due to rivalries between shipowners in industrialized countries anxious to maintain their positions, rather than to a policy of developing North-South links. This trend is not recent. Reference may be made, for example, to the formation of the CAROL (Caribbean Overseas Line) consortium in September 1974 by the four main European companies serving the Caribbean, motivated by the desire to respond to the competition of American companies by offering a direct containerized service between Europe and the Caribbean. The rapid development of containerization in North-South links is in practice based on an East-West rationale which by-passes the developing countries concerned. From the 1960s onwards, developing countries, anxious to ensure their independence, have sought to exercise greater control over their foreign trade. They have found a powerful means of making their voice heard in the United Nations and, for the maritime sector, in the United Nations Conference on Trade and Development (UNCTAD). In 1974, the latter drew up a Code of Conduct for Liner Conferences, the objectives of which were to take account more effectively of the interests of countries that generate traffic and encourage the growth of the fleets in developing countries. However, the great majority of the fleets concerned by this General Survey are outside the scope of the above Code. The Code only operates between countries that are parties to it, which are few in number. Also, many developing countries do not possess their own fleet due to the high cost of ships and operations.

43. Despite the multiplication of lines facilitating containerized service to developing countries, it faces many constraints to its expansion. These constraints are essentially of an economic nature. The nature of North-South trade relations requires the use of low-capacity ships, which reduces the economies of scale that can be achieved through containerization. The low volumes of trade are compounded by the imbalance of traffic between the industrialized countries, which export finished and high-value manufactured goods, and the developing countries, which ship raw materials, if they possess them, or raw products, such as agricultural produce, which are not equal in volume or value to their imports from the industrialized countries. This unequal trade is a barrier to the profitability of any containerized line. Finally, the economic weakness of developing countries is reflected in under-equipped ports, which result in technical constraints that do not lend themselves to containerization. The presence or otherwise of ports with a modern terminal capable of receiving container ships is often dependent on the government's financial capacity. Container ships may therefore need to be fitted with their own cargo-handling facilities, which reduces their cargo capacity. Taken together, these constraints explain why containerized transport to developing countries has only been introduced very gradually. It did not really become established until the early 1980s.

44. The globalization of the seas has undoubtedly been influenced by the rising power of the Asian countries in international trade over the past 20 years.[12] Trade relations between the Asian region and the United States and Europe have meant that the Japanese shipowners and those of the newly industrialized countries (NIC) now account for over half of the 20 biggest container fleets in the world. Asian ports now hold a dominant position in world port container movements, with their share rising to 38.4 per cent in 1990. As a result, East and South-East Asia, centred on Japan and led by the NICs, is now in the mainstream of East-West trade. The 1990s only reinforced the trends begun in the 1980s. The three main East-West markets are of major importance to the biggest global carriers, for they alone account for some 80 per cent of world container flows. Links with developing countries are exploited only as secondary links at the periphery of these major East-West routes. Indeed, carriers have developed a global supply of transport linking the three poles. Computerized techniques have also been developed to allow better tracking of cargoes and containers at all points.

45. It is well established that containerized traffic is concentrated in a limited number of ports, especially in the Asian region. This trend has been confirmed over the past ten years. A hierarchy has emerged between global ports and regional ports, principal and secondary ports. The maximum capacities of container ships have increased sharply. For shipping companies, it is no longer viable for these ships to call at ports unless the port loads or unloads between 10 and 25 per cent of a ship's total capacity. The fact is that only very large ports can offer this capacity and justify the ship's passage. In parallel, the grouping of shipowners into consortia, alliances and mergers have resulted in a rationalization of the supply of services, and consequently, the ports at which ships call. Finally, shipowners have to offer worldwide coverage to meet shippers' demands for "global" services. Such coverage requires a rational organization of routes. Shipowners select a few main port platforms, linked by maritime "highways". From each of these hubs, there is a network of feeder routes in a star pattern, to distribute cargoes to smaller ports. This is the so-called "hub and spokes" model. While there is indeed a shift of traffic to the very large ports, the fact remains that the distribution of traffic beyond the world's ten largest ports is becoming more balanced. Ports are benefiting from the multiplication of "feeder" lines.

46. In this highly competitive environment, the demands of shipowners and cargo handlers have led ports to transform their functions, statutes and development policies, which are becoming globalized.

[12] See ISEMAR: *La concentration du trafic portuaire de conteneurs*, note de synthèse No. 2, Nov. 1997.

B. Evolution of port functions

47. Port strategies have evolved with time. In the past, port establishments were mainly concerned with maritime activities. Other activities, such as trade and logistics, were carried out by the urban community more or less independently. Ports imposed their services on both shipowners and cargo handlers. They are now obliged, in order to escape the risk of dependency on these national or foreign partners, to develop industrial processing, commercial and international trade strategies, in close partnership with the port agglomerations. This has naturally resulted in changes in the organization and status of ports, which have thereby achieved a degree of autonomy vis-à-vis States, but have become increasingly linked to municipalities, regions and national and foreign private interests.

48. For the shipowner, the quality of port services depends on the reception of the ship and its cargo. The services provided must be varied, such as ship repairs, storage, trans-shipment facilities and the acceleration of customs and transit operations through the simplification and computerization of procedures. Given that the earning potential of a container ship is higher at sea than in port, the length of the stay is important. Shipping lines avoid ports where operational productivity is poor. A fundamental factor in the choice of ports by shipowners is their geographical position in their networks. The increase in the number of very large container ships and the spread of "feeder" systems have forced them to concentrate their routes on a few large ports. These ports are themselves forced into major investments in facilities to fulfil their role as "hubs". Ports are, in this sense, subject to the choices of large shipowners which, moreover, exercise strong pressure to reduce the costs of stays and improve the quality of services. Ports are often forced to develop relations between shipowners and port cargo-handling companies. It is true that shipping companies now have considerable latitude in their choice of ports of call and can, by their decisions on whether or not to use a certain port, strengthen or undermine its activities. However, the distribution of direct port calls between the shipowners in an alliance, added to the "feeder" system, allows greater dispersion of the volumes handled, which in turn benefits a larger number of terminal operators. In addition, relations between shipowners and terminal operators are increasingly being established on a mutual interest basis through joint ventures which offer a solution that is acceptable to all: shipping companies secure their ports of call and cargo handlers their client portfolio. Such associations also allow increasingly costly investments to be made jointly to adapt terminals to developments in shipping methods, which guarantees shipping companies suitable facilities and cargo handlers a competitive infrastructure. Finally, shipowners have formed and continue to form integrated transport chains. Some now provide an integrated transport network, including sea transportation, cargo handling, warehousing, transit and land transport.

49. From the point of view of the shipper, the choice of port depends on factors such as the goods transported, the fees, the geographical location of the port in relation to the origin and destination of the goods, the volume of traffic, the speed and reliability of feeder transport and cargo handling, or the existence of a free zone. However, the choice of port increasingly depends on whether it is integrated into a transport network. The shipper now combines production, transport, storage, cargo handling and delivery to the customer in an integrated logistical concept.

50. Only exceptionally is the port still a place of storage. The establishment of processing industries in port communities, to prevent down time, has developed their industrial and service functions. Their industrial function concerns export activities, such as shipbuilding and repairs, the manufacture of goods offshore, and the grading, packaging or certain assembly operations for products in transit, such as cars, chemicals and petrochemicals. Port establishments also participate in industrial activities, especially in free zones, where they provide preferential terms for industries, or in industrial zones close to quays. As port establishments have less control over the movement of goods than they used to, port communities seek to keep goods in the agglomeration by processing them or packaging them to increase their added value. Not all ports currently provide all these services, but they are seeing their functions change. For example, the port of *Anvers (Belgium)* covers over 14,000 hectares and has 130 kilometres of quays. Apart from the main docks and their facilities, the port offers integrated logistics services, such as pre-assembly, packaging, labelling, customs declarations, distribution, tracking, stock management, etc. A growing number of service providers operate in port areas and this trend is likely to strengthen in the next few years.

51. Ports have also endeavoured to develop their activities and form their own international networks. Container terminal operators in the world's major ports which have the necessary capital invest heavily in and operate facilities abroad. The major global terminal operators – such as Hutchinson International Port Ltd. in Asia and P&O Ports in Europe – are established on many continents and have developed computerized logistics activities. Some large ports are expanding their facilities abroad *(PSA Corporation Ltd. of Singapore)*. Those that cannot do so are inevitably dependent on the strategies developed by the other links in the chain, such as shippers, carriers and other more powerful competitor ports.

52. In the highly dynamic situation of the creation and consolidation of maritime or port networks, ports (hubs) and land platforms (dry ports) therefore take on a special character. By lowering transport costs, on the one hand, and seeking to add value in various services of container handling by providing transport, stuffing, unstuffing, inspection, cleaning, etc. during the process of off-loading, on the other, these sites become favoured places for making profits throughout the transport-logistical chain. So-called secondary ports are not,

however, excluded from the shipowner's port network and their value depends on the extent of secondary and "feeder" ports, which add dimensions and multiply opportunities to the shipowners. [13]

53. Public authorities are never really absent from any development decision. As the Committee indicated above, the State may decide on port strategy, management and operation. The State also intervenes more indirectly, for example by coordinating port improvements, financing investment or adapting the regulatory framework applicable to the port. Finally, the State always retains the authority over policing and security in ports.

1. Institutional frameworks

54. Globalization takes particular forms in ports because of their territorial base. Alliances of shipowners on the one hand and the main port operators pursuing global strategies, on the other, are among this globalization. The strategies adopted, in terms of competition between ports or development of terminal networks, do not result in the emergence of a single port model. The relationships between the public and private sectors and the role of the public port authorities vary enormously from country to country. Likewise, the debate should not concentrate on container traffic which, though it is very dynamic, constitutes only 10 per cent of tonnage in Europe compared with traffic in oil or solids, which is growing modestly, but which accounts for 50 and 25 per cent respectively of all European traffic. [14]

55. In the early 1990s, UNCTAD adopted a classification of ports based on their development strategies, their commercial policies and their organization. Three generations of ports were distinguished in this way. The **first-generation port** serves as an interface between two modes of transport. The **second-generation port** is a centre of transport, industrial activities and trade. Finally, the **third-generation port** becomes an integrated transport centre and logistical platform for international trade. In recent years, **a fourth generation of ports** can be seen emerging: network ports which can be described as a linked and integrated set of logistical platforms. These sites have unified management, consistent commercial policies, and a strategy of establishing bases and capital links, and share a common port information system. [15]

56. Financing needs have led port authorities to modify the way in which ports are administered. Calls for private financing and the development of

[13] See ISEMAR: *La concurrence entre armateurs de lignes régulières de conteneurs se gagne à terre*, Note de synthèse No. 35, May 2001.

[14] Source: Jürgen Dipner: *Les industries maritimes à l'épreuve de la mondialisation*, Symposium of the ISEMAR, Saint-Nazaire, 13 Oct. 1999.

[15] See ISEMAR: *Les ports de la quatrième génération*, Note de synthèse No. 1, Oct. 1997.

industrial and commercial activities in port communities have strengthened private sector representation in decision-making bodies of port administrations. The challenge to the State's role in ports does not, however, seem to extend to its regulatory functions of combating pollution, policing and control of the public domain. The restructuring of traditionally public ports is often aimed at introducing certain features of the private sector into port operations. That can be achieved in various ways, from intensifying competition in the port industry (with or without changes to the system of property ownership or legislation), to the more radical and irreversible option of disengagement by the public authorities.

57. Up to now, the State has played an important role in port institutions. Its participation takes many forms, from simple ownership of the site and basic infrastructure (landlord ports) to the supply of all services related to port activities (operating ports). The increasingly effective participation of the private sector in port operations over the last ten years follows widespread domination by the public sector since the 1940s. This transformation has affected both industrialized and developing countries. Between 1990 and 1998, 28 developing countries implemented some 112 port development projects with private sector financing. [16] The reasons for the involvement or otherwise of the public authorities in economic activities vary from country to country and may take financial, economic and ideological considerations into account simultaneously.

2. The reduction of public involvement

58. Port reform does not necessarily mean total withdrawal of the public sector from port activities. Instead, it may also take the form of a renewal of the existing institutional framework. Most often, port reforms tend to introduce private sector features into port operations. The various forms of structural adjustment which may be involved are examined below.

(a) Deregulation

59. The ILO has defined "regulation" in this field as a generic term designating the institutional rules that govern mixed economies, in which the State intervenes to modify the market to achieve certain socially desirable goals. [17] Two main types of regulation can be distinguished: economic regulation, which defines the framework in which companies operate and which often sets up public authorities responsible for authorizing one activity or

[16] Source: Database of the Private Participation in Infrastructure (PPI), World Bank, in: *Public policy for the private sector*, Note No. 193, World Bank, Sep. 1999.

[17] ILO: Symposium on the Social and Labour Consequences of Technological Developments, Deregulation and Privatization of Transport, Background document, ILO, Geneva, 1999.

another, and social regulation which constrains the market, sets limits on competition and institutes social responsibility for the external economic consequences of competition. [18]

60. Deregulation in the port sector could be defined as a limitation or elimination of the role, participation and intervention of the State. It means lifting the legal restrictions limiting private sector access to the port services market and opening the way to greater competition by abolishing any practice that would discriminate against private sector involvement or among private sector actors. The regulations put in place encourage the free play of competition, or even make it mandatory. The public authorities nevertheless retain general control over the port. Privatization is often considered as a form of deregulation and it is not always easy to say where deregulation ends and privatization begins.

(b) Privatization

61. The change in the status of ports is linked to the decline in the proportion of public funding and the expansion of the industrial and commercial functions of ports. But ports remain an element of international competition that the State cannot ignore. A vast trend for privatization of port services is currently developing throughout the world. The wave of privatization has been very strong in Europe, as well as in Asia. The rapid development of ports in these regions of the world, the increase in the size of ships and technological change require major investment at a time when public authorities are trying to withdraw from commercial activities. Thus, shares are being taken over by private groups, securities are being issued, financing is being provided in developing countries by international agencies such as the World Bank and the European Bank for Reconstruction and Development (EBRD), joint ventures are being developed between public authorities and private groups and, finally, port infrastructure is being financed by carriers, who thus become owners. Elsewhere, private companies only manage terminals or specialized ports.

62. Privatization could be defined in a restricted way as the transfer of the ownership of assets from the public to the private sector. This definition draws on the one suggested by the ILO [19] and on that of the United Nations Conference on Trade and Development (UNCTAD). [20] However, in the context of this survey, the Committee will also include in the definition of privatization the

[18] M. Belzer: *Paying the toll: Economic deregulation of the trucking industry* (Washington, DC, Economic Policy Institute, 1994), p. 5.

[19] ILO: Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry, ILO, Geneva, 20-24 May 1996, TMPI/1996.

[20] UNCTAD: Guidelines for Port Authorities and Governments on the Privatization of Port Facilities, United Nations, 23 Sep. 1998, UNCTAD/SDTE/TIB/1.

participation of the private sector in financing port equipment and infrastructure, in the provision of port services and in the management of ports. There may be many reasons behind the process of port privatization. For many governments, privatization of ports is an essential means of achieving economic development. It can be used to reduce the financial burden of state enterprises on the national budget or to avoid the State having to make increasingly large investments in port equipment and facilities. Governments may also seek to improve the efficiency and productivity of ports by introducing competition. In a broader sense, the concept of privatization refers to policies which encourage private sector participation in the provision of infrastructure and public services, thereby eliminating or modifying the monopoly status of state enterprises. Before embarking on any privatization process, however, progressive structural adjustments should be carried out. State-owned ports which are not significantly improved will experience great difficulty in operating under competitive conditions. A structural adjustment programme with a short planning horizon is likely to result in a brutal exposure of former state ports to competition and further weaken their position.

63. Privatization can be achieved in several ways. In the case of large state cargo-handling enterprises, the form most commonly used is to make shares available. The government sells all or part of its shareholding to private investors. In doing so, it may decide to keep the majority of the shares so as to retain an influence over port activities *(Argentina, Poland)*. Buyouts by management or employees are sometimes used to overcome opposition to privatization and to involve employees in the future of the enterprise. But the prospects for growth must be good and the enterprise must not be too large *(Poland, United Kingdom)*. In the context of BOT projects (build-operate-transfer), a private enterprise builds a facility, operates it, collects dues from users and, at the end of a specific period, transfers it back to the public authorities. In this type of concession contract, the private enterprise alone takes on the risks of the project *(Pakistan, Sri Lanka)*. Finally, in joint ventures, two or more private enterprises or a state enterprise and one or more private investors, jointly own the assets of the port company. The form of private sector participation varies from country to country, and only a few have implemented a full privatization programme *(Chile, United Kingdom)*.

Section III. Social repercussions

64. While the technical progress in the port industry is to be welcomed for the economic and financial reasons examined above, it is none the less necessary to consider closely the impact of this technical progress, as well as the changes described above in the ways ports are managed, on the employment of workers. The Committee wishes, in this regard, to associate itself with the statement made in a United Nations study that "there is no doubt that a number of factors

influence speed, quality and cost of cargo handling. But the human element represented by port labour is still to be regarded as the basic and decisive one". [21]

65. The profound changes which have affected cargo handling in ports have had an indisputable impact on the opportunities and nature of dockworkers' employment. These changes have also modified the conditions in which dock work can be performed. These points will be addressed generally in the following paragraphs and will be the subject of a comparative analysis of national law and practice in relation to the requirements of Convention No. 137 and Recommendation No. 145 in the next chapter of this survey.

A. Employment trends

66. The considerable investment required to finance regular lines and the need to make the maximum use of the available resources has added to the pressure on ports to improve further their operational efficiency and labour productivity. Analysis of the replies to the ILO questionnaire in preparing the report submitted to the Tripartite Meeting on Social and Labour Problems in the Port Industry (1996) shows that, in the first half of the 1990s, the workforce of dockers shrank considerably. However, the trends were not entirely attributed to the application of structural adjustment programmes. The International Transport Workers' Federation listed, in a 1995 report, [22] five main factors to explain the reduction in employment in ports. Their relative importance, as viewed by the affiliates of the Federation in the Asian and Pacific region, was as follows (on a scale of 1 to 5, with 5 being the maximum): new technologies (containerization): 4.0; new working methods: 3.9; deregulation: 3.6; privatization: 3.1; and reduction in the volume of traffic: 2.0.

67. To what extent do structural adjustment programmes in ports lead to a reduction in employment, leaving aside the adoption of a social plan decided upon by a private cargo-handling company? The traditional port management model of so-called "operating" ports gave a predominant position to the public authorities. The port authority was the owner of the whole port and operated it partly or wholly itself, including the provision of cargo-handling services. The port therefore placed its own dock labour force or a registered workforce at the disposal of its clients. The determination of the status, the placement and the

[21] United Nations Economic and Social Council, Economic Commission for Africa: A report on a Preliminary Survey of Factors Contributing to Level of Freight Rates in the Seaborne Trade of Africa, conducted pursuant to resolution No. 101(VI) adopted by the Economic Commission for Africa at its 112th plenary session on 29 February 1964 (doc. E/CN.14/TRANS/27), New York, 1965, para. 101.

[22] International Transport Workers' Federation: *Reform and structural adjustment in the world's ports: The future for labour and the unions*, London, 1995.

employment of dockworkers were solely the responsibility of the public authority. The State, of course, may decide to apply restrictive budgetary or monetary policies, designed to combat inflation and balance public expenditure, which often play an essential role in structural adjustment programmes and may also affect the port sector. The application of such policies often leads to job losses, at least in the short term. The adoption of modern cargo-handling techniques has also had the effect of significantly increasing labour productivity, while at the same time requiring capital investment. The introduction of the new cargo-handling techniques, which increase labour productivity [23] is not the only reason for reductions in the dock workforce. It can also be due to the geographical relocation of the area of port activity. For example, the use of unitized cargoes allowed the introduction and expansion of multi-modal transport which, in turn, facilitated the shift of cargo inland thus transferring what was once considered dock work to other, often less arduous, work inland in dry ports. Even though not all ports seek to become platforms offering integrated logistical services, containers can now be "stuffed" and "unstuffed" (term used in the port sector to indicate load and unloaded) at the premises of the shipper or consignee by their own employees. Even when this is not the case, containerization has made it possible to move "stuffing" and "unstuffing" operations entirely away from the dockside, which is generally cluttered, to off-dock facilities located near road hubs or inland container depots where there is more and better space. This shift of activities has had a significant impact on the employment opportunities of quayside dockworkers. Bearing in mind the development of this type of infrastructure and the links with the regions served by ports in developing countries, the volume of cargo handled in ports will undoubtedly continue to decline as the proportion of cargo carried by the so-called "door-to-door" system rises.

68. Restructuring is not the only factor affecting employment. The influence of other significant factors must also be taken into account, such as the opening of a new terminal, international competition between ports, significant changes in labour legislation, the relocation of traditional port activities to sites outside the sector, etc. Analysis is further complicated by the fact that these different factors are often closely interrelated.

69. The decline in employment in ports has placed many workers and their trade unions in a difficult position. In many cases, demand for labour has diminished and work prospects for the future are bleak.

70. The greater precision in the scheduling of ships' movements makes it much easier to plan the workforce required for cargo-handling operations. This has made it less necessary, up to a point, to use casual labour and has

[23] The Committee has referred in para. 35 to the modern equipment that is now possessed by ports.

encouraged the introduction of a dockworkers' registration system. Registration is even more necessary in view of the fact that dockworkers must be properly trained and have sufficient experience to use expensive cargo-handling equipment safely and efficiently. The registration of dockworkers, the regularization of their employment and the stability of their incomes are also new factors which help to improve conditions of work in many of the world's ports and raise the socio-economic status of the port sector. The need to continue to rationalize liner services has now become even more imperative because of the interpenetration of maritime transport networks. This trend, combined with intensified competition between regional ports and their efforts to provide a better quality service, has led many ports to offer 24-hour services, seven days a week. For dockworkers, this has meant the introduction of rolling shifts, sometimes accompanied by an extension of working time, which affects their social life and that of their family.

71. Privatization and deregulation can change many aspects of employment. Transfer to the private sector may mean a drop in wages and less protection, and it is the workers, including unionized workers, who suffer the effects. [24] According to an ILO report, experience shows that privatization and deregulation often result, at least initially, in the loss of a larger number of jobs. [25] Reductions in the workforce, when they are on a large scale, have high social costs, which can nevertheless be mitigated if the process is conducted with care. For example, redundancy programmes can include all kinds of measures for early retirement, redundancy compensation, retraining and help in finding a new job.

72. Many countries, and particularly developing countries, have only limited capital resources, which limits the possibility of financing mass termination and retraining programmes. Some of them were in favour of introducing "intermediate and flexible techniques" which they felt would allow workers to be kept on, for example, the introduction of palettization and pre-slinging of cargo, or investment in multi-purpose cranes. However, it should be understood that the possibility of adopting intermediary methods is usually limited, since shippers' requirements and the cargo-handling conditions of modern ships do not always allow any delay in the introduction of modern cargo-handling methods. Moreover, as the Committee has indicated above, container transport has become almost universal and inevitably requires the necessary facilities in States and authorities that have a port development plan.

[24] ILO: Symposium on the Social and Labour Consequences of Technological Developments, Deregulation and Privatization of Transport, Background document, ILO, Geneva, 1999.

[25] ILO: *World Labour Report 1995*, Geneva, 1995, pp. 55-67.

B. Trends in employment characteristics

73. The modernization process now affects ports in all parts of the world. While some ports are starting out on or completing the installation of expensive infrastructure using public or private financing, the main modern ports have long been run, or are increasingly widely being managed by computer systems, and inform their clients and promote their activities through the Internet. In every case, however, these technological changes have influenced and will have an impact on the level of skills required of dockworkers. As far back as 1951, when the use of computers was not even foreseen, the Inland Transport Committee stressed the need for vocational training for dockworkers. It indicated that "in modern ports the handling of cargo, especially mixed cargo, calls for a certain amount of experience and knowledge on the part of the dockworkers" and requested the Governing Body to "draw the attention of governments and of the employers' and workers' organisations concerned to the importance of an adequate training of dockworkers for the handling of mixed cargo in modern ports". [26]

74. In the past, there was a measure of agreement that dockworkers could be defined as unskilled or low-skilled labourers. Most dockworkers learned their trade on the job. Today the system has matured, since the demand for skilled dockworkers has become so great that there is a limited demand for unskilled workers. Of course, repetitive tasks may still persist, but new tasks which require both dexterity and the ability to make decisions and take initiatives have emerged. These jobs often involve operations on which the speed and safety of the entire transport chain depends. Such jobs require proper training, although workers can expect greater fulfilment at work and greater job satisfaction than in the past. Some trades may also change as the result of introducing electronic equipment and computers. In the past, for example, foremen had to take decisions on a case-by-case basis on loading, unloading, storage, safety, working hours and shift schedules. The whole sequence of work and the allocation of tasks can now be planned by computer, and the foreman's role is no longer simply a matter of ensuring that cargo-handling operations are carried out quickly, observing safety criteria according to a pre-defined plan. Nevertheless, the supervisory and control function has not become obsolete. It is changing. Other skills will increasingly be required of the foremen, such as the ability to serve as intermediaries between employers and employees, knowing and mastering the operation of modern equipment, computer skills and being able to analyse data and information. In short, the roles of foremen and workers are redefined by the equipment and organization of each port.

[26] ILO: Inland Transport Committee, Fourth Session: resolution (No. 50) concerning the training of dockworkers, *Official Bulletin*, Vol. XXXIV, No. 2, 20 Dec. 1951, pp. 98-99.

75. Technical progress invariably generates an increasingly urgent need for suitably trained personnel able to take responsibility, which generally means greater specialization. On the other hand, it often proves necessary to increase flexibility in the use of the available labour, which in one sense implies multiskilling in terms of jobs and qualifications. At first sight, the trend towards multiskilling may seem the opposite of specialization, but that is not necessarily the case, as the two trends can be combined by giving workers specialized training in different but related fields, which allows them to perform a greater range of tasks. Labour flexibility and the efficiency of the enterprise may therefore benefit substantially. As a result of this desire to make the workforce more flexible, the multiskilled worker has become an increasingly common figure in ports. It is possible to extend the possibilities for the deployment of the workforce, for example, by training operators of cargo-handling machines to operate a whole range of vehicles and machines, or by allocating dockworkers to specific jobs in warehouses when no ship is available. The new cargo-handling methods will demand interchangeability in the roles of dockworkers, who must be able to go from one task to the other without difficulty. [27] In some ports, trade unions have opposed multiskilling which, in their view, could lead to job losses. [28] Others have accepted that allowing workers to perform multiple tasks enriches their work, which should be considered beneficial in itself.

C. Adjusting the size of the workforce

76. Many ports have not yet adapted sufficiently to the changing methods, which have an impact on the size of the workforce. On the one hand, the introduction of new cargo-handling techniques is an advantage for workers, since it makes very demanding physical work easier, and trade unions recognize the need to ensure that the port is competitive, which has a direct impact on employment prospects. On the other hand, workers are afraid that the new methods will lead to a considerable reduction in employment levels.[29] For this reason, the introduction of new cargo-handling methods has generally been the subject of consultations between employers and workers, or their organizations, sometimes under the guidance of the public authorities. Nevertheless, some States and port authorities did not take the ILO's warnings into account nor, to a lesser extent, the adoption by the Conference in 1973 of the Convention and the

[27] A.A. Evans: *Technical and social changes in the world's ports*, ILO, Geneva, 1969, p. 81 et seq.

[28] A.D. Couper: *New cargo-handling techniques: Implications for port employment and skills*, 1986, p. 69.

[29] There have been cases where workers have refused to use the new port equipment and have opposed the introduction of rolling shifts and the reduction in the size of gangs.

Recommendation, concerning the need to adjust the dock workforce to the required level, and continued, especially in the context of sectoral employment policies, to recruit large numbers of dockworkers without providing them with adequate training. As a result, some countries or ports have found themselves with too many workers and not enough cargo-handling equipment.

77. The use of the new cargo-handling methods requires a skilled workforce. It has become necessary to regularize the employment situation and organize training programmes. Regularization was essential because casual labour did not provide the necessary responsible and skilled labour to handle cargoes efficiently in modern ports equipped with sophisticated facilities. In many countries, dock work is reserved for registered workers. Registration allows a more efficient and fairer allocation of workers during peak periods and at slack times. In many countries, dockworkers' employment agencies or other administrative bodies, such as dock labour boards, have been set up to maintain the register and act as intermediaries between employers and workers. For this purpose, it is essential that these agencies are impartial and operate in such a way as to ensure that labour market institutions function effectively. Casual labour is still widespread in ports throughout the world, even if it concerns a minority of workers.[30]

78. Of the measures to reduce the workforce, in addition to freezing recruitment, a strategy that is frequently adopted is to encourage early retirement, provided that sufficient resources are available to finance it. In this respect, various compensation schemes have been established. Financing reductions in the workforce is sometimes very costly and many countries certainly have difficulty in adopting the necessary measures smoothly. In most of the world's ports, it has been possible to reduce the workforce through structural adjustment combined with schemes to reduce the payroll and encourage early retirement. According to the 1995 report of the International Transport Workers' Federation, between 1990 and 1995, the average number of surplus jobs in ports in the Asian and Pacific region was less than the number of surplus workers in the rest of the world. Compared with other countries, those in the Asian and Pacific region made more use of early retirement schemes and agreed terminations to adjust their workforces. Termination compensation can be financed by port authorities, private employers or special public funds. Other means of financing have also been used, such as levies on port dues and import charges. The selection of the workers to be made redundant is a difficult exercise. According to replies to the ILO questionnaire for the 1996 tripartite sectoral meeting, the criterion most often applied is the worker's professional

[30] More than two-thirds of the replies to the questionnaire sent out by the International Transport Workers' Federation reported the existence of casual work estimated at less than 10 per cent of the total workforce.

conduct. Other criteria which could be used are age, seniority and relevant professional skills.

D. Working conditions

79. The first issue that arises is of a general nature. In almost all countries, the principles governing the contract of employment and other matters, such as wage protection, working time, weekly rest periods and holidays with pay, are fixed by legislation. The legislation often applies either to all employees or to those in industrial enterprises (which normally include transport) or commercial establishments. In such cases, dockworkers are also protected by these provisions.

80. In the majority of ports, dockworkers are essentially paid on a time basis. Simplicity is the main advantage of this system. There is little hierarchy in dock work and jobs are generally easy to define. The question of wage levels was addressed in the 1960s by the second Inter-American Port and Harbour Conference, which clearly indicated with regard to the situation in Latin America that "labour must be encouraged by receiving a living wage in the normal day, instead of the present system so prevalent whereby daily wages are so low that the worker must depend heavily on overtime in order to live". [31]

81. As indicated above, the introduction of bulk-handling methods and containerization encourages the development of highly capital-intensive ships and terminals. These costs require the intensive use of assets and the extension of port operating hours, often up to 24 hours a day. This innovation has facilitated the introduction and increased the number of different working time arrangements. Shift work undoubtedly has repercussions on the social life of dockworkers. This working time arrangement has, however, been well accepted by workers and their unions, who regard it as essential to the efficient running of ports. However, a practical difficulty has arisen concerning the distance between the port and workers' homes, especially for night shifts. The introduction of shift work also disrupts the social life of wórkers, since they must recuperate from the night shift during the day and no longer have the same weekly rest days or holidays as their families.

82. Wages are a major item in port operating costs and are therefore a fundamental aspect of port restructuring. Most governments replying to the 1996 ILO questionnaire expect that port restructuring will lead to a rise in real wages. In some cases, the expected rise can be attributed to the trade union practice of

[31] Organization of American States: *Problems of ports in Latin America and the Port Programs of the Organization of American States*, Second Inter-American Port and Harbour Conference, doc. 5, Washington, DC, Pan-American Union, 1962, p. 8.

negotiating wage rises for workers who keep their jobs in compensation for the reduction of the workforce as a result of restructuring. In addition, port restructuring is intended to improve productivity, and generally achieves this aim, thereby allowing wages to rise. These wage rises can undoubtedly also be explained by the increase in workers' skills. As a rule, port restructuring leads to less strict job demarcations, which allows the range of tasks allocated to each worker to be extended. This improvement in the quality of the workforce is also normally accompanied by a rise in wages.

83. The majority of ports are subject to precise safety and health rules fixed by the current regulations. In some countries, a port authority, or several authorities grouped into associations *(Japan)* play a crucial role in developing these rules. Elsewhere, the rules are fixed by international agreements, the country's Ministry of Transport or Ministry of Health, special safety and health committees, collective bargaining or by a combination of the above.

84. While it is important to modernize the equipment and working methods used in the port industry, it is also necessary in many countries to improve the social situation of workers in the sector. The greatest importance must be attached to establishing a climate of trust between employers and workers and to securing conditions of employment that are generally recognized as acceptable in such areas as remuneration and working time (hours of work, rest periods and holidays with pay). Safety regulations should also be reviewed, as well as the provision of appropriate social benefits.

Section IV. Standards and activities relating to dock work

A. The ILO's standards-related activities

85. Apart from the instruments specifically dealing with dock work, a very large number of instruments adopted by the ILC, especially those concerning work in industrial enterprises, apply to dockers as employees. Indeed, many of these instruments fix minimum standards for the administration of labour and the protection of workers, but many also cover broader issues relating to employment, human resources development and social policies. Almost all aspects of employment and conditions of work, including placement, working time, wages, labour inspection and social benefits, are therefore covered. Some of the older instruments expressly include dock work in their scope of application. [32] It should also be borne in mind that the basic instruments on the protection of human rights are naturally applicable to dockworkers.

[32] For example: the Hours of Work (Industry) Convention, 1919 (No. 1), and the Weekly Rest (Industry) Convention, 1921 (No. 14).

86. The ILC turned its attention very early on to the question of conditions of work in cargo handling in ports. The arduous and dangerous nature of dock work was reflected in the particularly high incidence and seriousness of accidents. The ILC has therefore been adopting Conventions and Recommendations since 1929 to provide dockworkers with protection. [33] These instruments mainly concerned safety and health. The current reference instruments are the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), and Recommendation (No. 160), which supplements it. [34] Indeed, at the proposal of the Working Party on Policy regarding the Revision of Standards, the Governing Body has invited member States, especially States parties to the first Conventions on dock work, Nos. 28 and 32, to examine the possibility of ratifying Convention No. 152 [35] and giving effect to Recommendation No. 160. [36] These two instruments prescribe in great detail the measures to be taken to improve and maintain workplaces and cargo-handling equipment, the use of working methods offering adequate guarantees of safety to workers, as well as regular inspection and appropriate sanctions. Before the adoption of the 1979 instruments, the ILO had also prepared and updated a guide and a code of practice for institutions or persons with responsibility for safety and health in cargo handling in ports.[37] In view of the rapid technological changes in the sector, a revision or merger of the guide and code of practice is planned for 2002-03.

87. Finally, the Committee notes with interest that the Office submitted a proposal to the Governing Body at its 282nd Session (November 2001)[38] for a general discussion to be held at a future session of the Conference on work in ports based on an integrated approach.[39]

[33] In 1929, the ILC adopted the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27), and the Protection against Accidents (Dockers) Convention, 1929 (No. 28), as well as the Protection against Accidents (Dockers) Reciprocity Recommendation, 1929 (No. 33), and the Protection against Accidents (Dockers) Consultation of Organisations Recommendation, 1929 (No. 34). The Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32), and the Protection against Accidents (Dockers) Reciprocity Recommendation, 1932 (No. 40), were adopted in 1932.

[34] As at 7 December 2001, 20 member States had ratified Convention No. 152.

[35] See docs. GB.265/8/2 and GB.271/11/2.

[36] See doc. GB.279/11/2.

[37] See the *Guide to safety and health in dock work*, 1976, and the Code of practice on safety and health in dock work (revised), 1977.

[38] See doc. GB.282/2/1 (paras. 171-181).

[39] The objective of the integrated approach is to increase the coherence, relevance and impact of ILO standards-related activities. A new type of discussion based on the integrated approach should make it possible for the Conference to determine the needs and priorities of the Organization in a specific field and accordingly adopt a global plan of action. The preparations for this discussion include an analysis of all the means of action (standards, codes of practice,

B. ILO technical cooperation

88. The ILO has implemented, or assisted in, a large number of projects in the framework of technical cooperation programmes designed to help solve problems related to dock work, including surveys, the preparation of plans for regularizing employment, courses delivered in training centres, the organization of study cycles, etc. Reference may be made to *Dakar, Montevideo, Penang* and *Singapore* as some of the ports that have benefited from this assistance. National port training centres, especially in *Cameroon, Costa Rica, India, Pakistan, Panama, Peru, Philippines, Sierra Leone, Turkey* and the *United Republic of Tanzania* are among the countries which have benefited from ILO assistance in the framework of projects financed by the United Nations Development Programme (UNDP). In general, when a government so requests, the ILO's technical assistance is devoted, in consultation with the government concerned, to planning and implementing an assistance project which may be directly targeted at dockworkers or the staff of training centres. In 1987, the ILO developed a new training strategy called the Portworker Development Programme (PDP) following a survey carried out in 1985 [40] on the implications of the new cargo-handling techniques for port employment and training, which recommended that developing countries should be helped to set up effective and systematic training programmes in order to draw the full benefit of technological progress in the sector. The objective of the PDP is to enable government and port authorities in developing countries to establish training programmes to improve the efficiency of cargo handling, conditions of work, safety and the status and welfare of dockworkers. The PDP training materials are designed as independent training modules for interactive teaching under the guidance of a trained instructor. The first 30 modules of the PDP cover training of personnel in container handling. These modules address a wide range of subjects for all workers (modules on safety related to access and at work, for example), or more specifically for certain categories of personnel (modules on loading and unloading of container ships, for example). The PDP training materials are available to countries, ports and specialized port training institutions. The ILO also provides technical assistance in developing the necessary framework to use them properly. These training materials have already been used in many ports and port-related institutions in Africa, Asia, Europe and Latin America. [41]

technical cooperation activities and advisory services) with a view to determining whether they respond to the needs and the objectives of the ILO in this field, identifying any shortcomings and envisaging better means of remedying them (see doc. GB. 282/2/1).

[40] A.D. Couper: *New cargo-handling techniques: Implications for port employment and skills*, Geneva, ILO, 1986.

[41] The PDP is available in English and Spanish. It is being translated into Arabic, Chinese (Pothnghwa), Greek, Korean and Portuguese languages. More than 50 organizations, ports and

89. The major distinctive feature of the ILO's technical cooperation activities is the fact that they include the active collaboration of employers and workers and their organizations. In this respect, the ILO's experience in the port sector shows that when the social partners are consulted and involved at all stages of the formulation, implementation and evaluation of technical cooperation projects, their objectives are pursued more effectively and their chances of success are improved. In this connection, the Committee particularly notes an ILO technical assistance project aimed at the countries in the southern part of Latin America (CONO SUR) [42] as part of the follow-up programme to the ILO Declaration of 1998 as regards freedom of association. The objective of the project is to improve industrial relations in the port sector in the countries concerned by implementing a national tripartite plan of action over a period of 12 months starting in October 2001.

C. Other international and regional standards and activities

90. It is also useful to refer briefly to the many international and regional standards and activities relating to the port sector and which illustrate the value of development and the stakes involved. [43] In the first place, mention should be made of the research and training activities of international agencies, particularly UNCTAD, the World Bank, the International Maritime Organization (IMO) and the United Nations regional economic commissions covering various aspects of the economies, methods and organization of cargo handling in ports. In the context of UNCTAD's assistance activities, the TRAINMAR programme has been developed to train port managers at all levels. The training is in the form of courses. The TRAINMAR programme has been implemented in African, Asian, Latin American and Caribbean countries. UNCTAD and the ILO are cooperating in the integration of PDP modules in training programmes. Another programme developed by UNCTAD, TRAINFORTRADE, concentrates more specifically on the application of policies to promote human resources development in the context of international trade and transport. The World Bank has just finalized a new "Tool Kit" on port reforms, which constitutes a guide for governments on the privatization of ports. The IMO focuses its activities on maritime issues, it has also adopted the Container Safety Convention (CSC) of 1972, which lays

port training institutions in *Argentina, Australia, Chile, China (Hong Kong Special Administrative Region), Costa Rica, El Salvador, Ghana, Greece, Guatemala, Honduras, Kenya, Republic of Korea, Malaysia, Mauritius, Netherlands, Nicaragua, Panama, Papua New Guinea, Peru, Philippines, South Africa, Sri Lanka, United Republic of Tanzania, United States* and *Uruguay* have acquired the PDP.

[42] The project involves: *Argentina, Brazil, Chile, Paraguay* and *Uruguay*.

[43] For additional information, a list of web sites is provided at the end of the chapter.

down rules for the maintenance of containers, and the International Maritime Dangerous Goods Code (IMDG Code) of 1965, which lays down safety standards for handling dangerous goods in ports and their transport. Reference should also be made to the research work and the implementation of assistance programmes in the framework of the activities of the Economic Commission for Latin America and the Caribbean (ECLAC) and the Economic and Social Commission for Asia and the Pacific (ESCAP). Both are regions where countries have been particularly quick over the past ten years to adopt policies for the development of transport infrastructure, and especially port facilities.

91. The Committee also notes that the question of service provision in sea ports has been receiving special attention in the countries of the European Union since the submission by the Commission to the European Parliament and Council of a communication and a proposal for a directive on market access to port services.[44] On 14 November 2001, the European Parliament adopted a report on market access to port services containing a proposal for a European Parliament and Council decision and a draft legislative resolution.[45]

92. In addition to intergovernmental organizations, the activities of non-governmental organizations should be mentioned, such as the International Organization for Standardization (ISO), professional associations such as the International Association of Ports and Harbours and the International Transport Workers' Federation, and research and training institutions, such as the Institut supérieur d'économies maritimes (ISEMAR). All these organizations have contributed, through their standards, research, publications, conferences and training courses, to a better understanding of the complexity and challenges of development in the port industry, and especially its social consequences.

93. In preparing this survey, the Committee was greatly assisted by the high-quality information made available to the public, in particular through the Internet, by the various organizations mentioned above. It would particularly recommend the sites mentioned in the non-exhaustive list at the end of this chapter.

[44] Commission of the European Communities: *Reinforcing quality service in sea ports: A key for European transport*, 13 Feb. 2001.

[45] European Parliament: *Report on the proposal for a European Parliament and Council decision on market access to port services*, Committee on Regional Policy, Transport and Tourism, A5-0354/2001, 17 Oct. 2001.

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http://www.iaphworldports.org/top.htm
http://www.isemar.asso.fr/fsomma.htmnnnn

CHAPTER II

APPLICATION OF THE INSTRUMENTS: REVIEW OF NATIONAL LAW AND PRACTICE

94. The interests at stake in the development of port activities now require that shipowners and shippers are at least assured of the smooth movement of cargoes and the rapid turnround of ships. To achieve this, all those involved, including the public authority responsible for the ports, port operators, and workers, have to acquire an "ethos of productivity", while, at the same time, accepting that improving the organization of a port and increasing productivity have to be achieved through the adoption of new management methods and modern techniques, rather than by demanding excessive efforts from the workers. This view was expressed by the Inland Transport Committee in its resolution (No. 66) concerning methods conducive to improving the organization of work and profitability in ports. It is obvious that increasing the efficiency of port activities does not depend on dockworkers alone, but ultimately on the performance of all those involved and on good collaboration between them. At the same time, it is essential to address the fear among dockworkers that new methods of work and modern cargo-handling techniques will substantially increase unemployment, substantially compromise employment prospects and earnings and worsen their conditions of work. This chapter identifies the category of workers (section I) who enjoy guarantees respecting their employment, incomes and training (section II) granted to offset the social impact of introducing new cargo-handling methods (section III), and to ensure, in so far as possible, an appropriate climate based on good relations among all concerned, including employers and workers or their organizations (section IV).

95. This chapter provides a brief overview of law and practice at the national level concerning the points addressed above, in relation to the provisions of the Convention and the Recommendation. First of all, however, as referred to earlier, the organization of work varies greatly from one port to another and that it is very difficult to provide a complete picture and to formulate recommendations applicable to all the situations that may be found. The various issues addressed and the suggestions made below therefore need to be adapted to local circumstances.

Section I. Persons covered by the instruments

A. Definition of the terms "dock work" and "dockworkers"

1. Diversity of methods

96. Under *Article 1* of the Convention and *Paragraphs 1 and 2* of the Recommendation, the instruments apply to "persons who are regularly available for work as dockworkers and who depend on their work as such for their main annual income." The terms "dockworkers" and "dock work" mean "persons and activities defined as such by national law or practice. The organizations of employers and workers concerned shall be consulted on or otherwise participate in the establishment and revision of such definitions. Account shall be taken in this connection of new methods of cargo handling and their effect on the various dockworker occupations."

97. The Office indicated, in the report presented to the 57th Session of the ILC with a view to the discussion of the instruments under consideration, that a clear majority of the governments that had replied to the question concerning definitions considered that the term "dockworker" should be extended to any worker engaged in handling goods in a port, both ashore and on board ships. A certain number of governments, however, qualified their replies by suggesting reasons why, in practice, the application of such a definition would run into difficulties. Some governments indicated that they could not accept the proposed definition or considered that it was up to national law and practice to define the term "dockworker". In the light of the diversity of views, the Office finally took the view that the definition of the term "dockworker" should be left to national law or practice (collective agreements, for example) and included a provision to that effect in the proposed conclusions.

98. The question of the definition of the term "dockworker" was the subject of a long discussion by the Dock Work Committee. The Worker members advocated the adoption of the widest possible definition which would cover all tasks arising out of the new cargo-handling methods. The Employer members considered that the definition should be left to national law and practice, as envisaged in the text proposed by the Office. The Government members were divided on the issue. After lengthy deliberation, the definition of the terms in question was finally left to national law and practice in view of their diversity. It was envisaged that "organisations of employers and workers concerned shall be consulted on such definitions. Account shall be taken in this connection of new methods of cargo handling and their effect on the various dockworker occupations." Any problems of jurisdiction relating to the changes and arrangements introduced would therefore be more easily resolved. Finally, following a proposal by the Government member of the United Kingdom, the Dock Work Committee amended the texts originally proposed so as to

encompass, with regard to consultation of employers' and workers' organizations, both the definitions and the revision of such definitions.

99. In addition to the persons covered obligatorily by the two instruments, which in principle apply to "persons who are regularly available for work as dockworkers and who depend on their work as such for their main annual income" (*Article 1, paragraph 1*, of the Convention and *Paragraph 1* of the Recommendation), *Paragraph 36* of the Recommendation provides for the possibility of applying it also "to occasional and to seasonal dockworkers in accordance with national law and practice". During the preparatory work, the question of the applicability of the two texts to casual workers was raised. A majority of governments replied in the affirmative, but real agreement on how they were to be applied to such workers could not be reached. Some governments suggested progressively extending the scope of application of the two instruments to all dockworkers. Others preferred that the application of each provision to the various categories of dockworkers should be explicitly stated. While some governments merely said that, in principle, only regular dockworkers should be engaged in port work, and that occasional workers should only be hired in exceptional circumstances, they all agreed that the same conditions of employment should apply to all dockworkers. [1]

100. There can be no universal and absolute definition of dockworker or dock work. As the Committee indicated above, the wording of the relevant provisions of the Convention and the Recommendation takes into account any differences that may exist between one country and another. Furthermore, the development of new cargo-handling methods may require a redefinition of the trade and the related activities. In this respect, *Paragraph 12* of the Recommendation proposes that "the number of specialised categories should be reduced and their scope altered as the nature of the work changes and as more dockworkers become able to carry out a greater variety of tasks". Definitions may be either restrictive, or extensive to cover as many tasks as possible, some of them the product of technical progress.

101. The two instruments do not contain any rules on how to define dockworker and dock work. The examination by the Committee of the replies submitted by member States shows that only a small majority of national laws define the terms concerned. Some countries leave the definition to national practice, and particularly to collective agreements. However, the adoption or otherwise of a definition in the law does not necessarily reflect the degree of interest or priority attached to the question of dockworkers' employment. For

[1] *Social repercussions of new methods of cargo handling (docks)*: Reports V(1) and V(2), ILC, 57th Session, Geneva, 1972; *Social repercussions of new methods of cargo handling (docks)*: Reports V(1) and V(2), ILC, 58th Session, Geneva, 1973; Report of the Committee on Dock Labour, *Record of Proceedings*, ILC, 58th Session, Geneva, 1973, pp. 277-288 and 497-503.

example, some countries which have ratified the Convention have definitions of dockworkers and dock work in collective agreements, rather than in legislation. [2] Furthermore, the Committee considers that the provisions of *Article 1* of the Convention should not be interpreted as requiring member States to define the terms "dockworker" and "dock work" in a law. On the contrary, full latitude is left to national practice to address this question. [3]

Application of the instruments in inland ports

102. A number of governments indicated in their reports that their geographical situation (the absence of a sea coastline or inland waterways) does not allow them to give effect to the provisions of the Convention or the Recommendation.[4] Other countries which are in a situation of being landlocked and have not ratified the Convention, nevertheless reported on the effect given to the provisions of the Convention and the Recommendation.[5] The Committee wishes to make some comments in this respect. In the first place, it observes that it is difficult to determine, from the discussions at the 57th and 58th Sessions of the ILC and the various documents on dock work prepared since then by the ILO, the applicability of the Convention and the Recommendation to workers in inland ports. However, the Committee notes that the preliminary report that the ILO prepared and sent to member States with a view to the discussion at the 57th Session of the ILC [6] contains direct references to the situation of workers in river ports.[7]

103. While the Committee has concentrated mainly on the important transformations of the port industry in relation to maritime transport, it is nevertheless aware of the importance of river links for the transport of cargo at the national and regional levels and of the need for adequate port infrastructure to handle such cargo. Although the question is not specifically addressed in the instruments, the decision to apply the provisions of the Convention and the Recommendation to workers in inland ports should be left to the national law and practice of each member State, in accordance with the provisions of *Article 1* of the Convention and *Paragraphs 1 and 2* of the Recommendation.

[2] *Costa Rica* and *Sweden.*

[3] Direct request on the application of the Convention addressed to the Government of *Sweden* in 1985.

[4] *Burkina Faso, Ethiopia, Lesotho, Luxembourg, San Marino.*

[5] *Austria, Burundi* and *Czech Republic.*

[6] ILO: *Social repercussions of new methods of cargo handling (docks),* ILC, 57th Session, Report V(1), Geneva, 1972.

[7] In addition, *Afghanistan,* which does not have direct access to the sea, nevertheless ratified Convention No. 137 on 16 May 1979 and has indicated in its reports on its implementation that it intends to give effect to it in its two main river ports.

The Committee nevertheless considers that, taking into account variables such as the volume of traffic, the level of equipment and the available workforce, similar conditions of employment and work should in so far as possible be secured for dockworkers in inland ports who carry out work that is equivalent to that of maritime ports. As comparatively less inland ports are using modern methods of cargo handling, the instruments have even greater importance in ensuring the social protection of the workers in these ports.

Specific legislation on dock work

104. Many countries have adopted specific laws or regulations on dock work which contain detailed definitions. An exact reproduction of the term "dockworker" as set out in the two instruments is rarely found. In general, the definitions examined are broad, covering all the tasks performed within the precincts of a port, and sometimes even outside. [8] This is the case, for example, in the following countries: *Argentina,* [9] *Bangladesh,* [10] *Brazil,* [11] *India,* [12] *Indonesia* [13] *Italy,* [14] *Japan,* [15] *Madagascar,* [16] *Malta,* [17] *Myanmar,* [18] *Pakistan,* [19]

[8] *Barbados:* according to the Government's report, a revision is under way to extend the definition of dockworker to people employed in handling cargo outside the limits of the port of *Bridgetown*, the country's only port.

[9] *Argentina:* Act No. 21,429 of 29 September 1976: provisional rules on dock work (s. 2).

[10] *Bangladesh:* Dock Labourers Act (No. XIX of 1934) (s. 2).

[11] *Brazil:* Act No. 8630 of 25 February 1993 (the Ports Act), ss. 26 and 57.

[12] *India:* Dock Workers (Safety Health, Welfare) Act, 1986 (s. 2).

[13] *Indonesia:* Joint Decree No. PM.1/05/Phb.78 of the Ministry of Transport and the Ministry of Labour, International Migration and Cooperatives on regulation, organization, development and management of dockworkers (ss. 1 and 3).

[14] *Italy:* Act No. 186 of 30 June 2000 amending Act No. 84 of 28 January 1994, and Legislative Decree No. 535 of 21 October 1996.

[15] *Japan*: Port Labour Law (No. 40 of 1988) (s. 2).

[16] *Madagascar:* Order No. 1849-1GT of 23 September 1953 (as amended) giving effect to the Act of 15 December 1952 respecting working time in cargo-handling enterprises in docks whether or not they are accessible to vessels from the high seas.

[17] *Malta:* Ordinance XIV of 1962, as amended in 1991, on dockworkers (s. 2) supplemented by the Dockworkers Regulations of 1 January 1993 (s. 2). See also Act No. XVII of 1991, as amended in 1993, on the establishment of the Malta Maritime Authority (s. 2).

[18] *Myanmar:* see the Dockworkers Act, 1934, and Dockworkers Act, 1945 (regulations on employment).

[19] *Pakistan:* Dockworkers Regulations, 1948 (s. 2g), pursuant to section 5 of the Dockworkers Act (XIX), 1934; Regulations of 3 December 1973 on dockworkers in the port of Karachi; Dockworkers Employment Regulations Act (IX) of 1 March 1974 (s. 2b).

Philippines, [20] *Poland*, [21] *Portugal*, [22] *Russian Federation*, [23] *Thailand*, [24] *United States* [25] and *Uruguay*. [26]

105. For example, in *Belgium*, the law has given dockworkers a legal status, whereas previously cargo handling in docks was based on collective agreements and custom, under which a closed-shop system had been in place. The notion of dock work is defined by the Royal Decree as all handling of cargoes transported by seagoing ship or inland shipping, by railway wagon or lorry, ancillary services relating to such cargoes, whether the activities take place in the docks, on navigable waterways, quays or in firms engaged in the import, export and transit of cargoes, and any handling of cargoes carried by seagoing ship or inland shipping to and from the quays of industrial establishments. [27] In general, therefore, dock work is defined not only in terms of the type of work, but above all in terms of the place where it is performed. Dockworkers are the holders of a permit granted by the joint subcommittee in the port concerned based on various criteria (including conduct, age, medical fitness, professional aptitude) but broadly similar from one port to another. Recognized workers are divided into two groups: general workers who perform trans-shipment operations, and store workers who only work in the warehouses located in the port area. The general workers are divided into several occupational categories corresponding to the various trades (general work, crane drivers, truck drivers), and two subgroups A and B based on seniority. New recruits are placed in subgroup B and only move up to subgroup A after two years. In *France*, the Maritime Ports Code describes dockworkers as those who engage in loading and unloading of ships and vessels in public docks or in places used by the public (container yards, sheds or warehouses) (section R 511-2). Since 1992, the code has also drawn a distinction between professional (monthly or intermittent) dockworkers and casual dockworkers (section L 511-2). In *Panama*, the legislation distinguishes between dockworkers exercising their trade under the control of the national port authority as government employees, and those

[20] *Philippines:* Safety and Health Standards in Dock Work adopted on 19 April 1985 (s. 1).

[21] *Poland:* Regulation of 6 July 1993 of the Ministry of Maritime Economy and Transport.

[22] *Portugal:* Legislative Decree No. 280 of 13 August 1993 (s. 1(2)).

[23] *Russian Federation:* Regulation on the protection of work in maritime ports approved by Ordinance No. 2 of the Ministry of Transport, Department of Maritime Transport, 9 January 1996.

[24] *Thailand:* Ministerial Regulation No. 11 of 14 September 1998 (clause 2), issued under the Labour Protection Act of 12 February 1998 (B.E. 2541).

[25] *United States:* Remuneration of Port and Dockworkers Act (33 USC, para. 901 et seq.).

[26] *Uruguay:* Decree No. 412 of 1 September 1992, issued under the Ports Act, Act No. 16246, (ss. 9 and 23); Decree No. 57 of 8 February 1994.

[27] *Belgium:* Royal Decree of 12 January 1973 (s. 1).

employed by concessionaires, other port users or shipowners. [28] In *Romania*, under Government Decree No. 575bis of 22 September 1992, a "classification of occupations in Romania" was drawn up, Chapter VII of which defines the various occupations carried on in ports. Definitions of the terms concerned are also contained in a collective agreement signed in 1997 by a group of ports, and by a Government Ordinance of 1999. [29]

Definition included in general legislation

106. Some aspects of the conditions of employment and work of specific categories of workers, such as those employed in ports, may be covered directly by a general law, such as the Labour Code or Industrial Relations Act. In such cases, it is possible to find definitions of the terms in question in these texts. [30] For example, *Chile's* Labour Code defines dockworkers as anyone who loads or unloads goods and performs work specific to port activities, both on board ships in the ports of the Republic and in port precincts. [31] The Directorate of Employment has interpreted this provision in such a way as to take account of new cargo-handling methods in ports, especially the fact that the transport of goods is increasingly integrated and multi-modal, taking into account Act No. 19,542 on modernization of the public ports sector. Dockworkers are defined as workers who load and/or unload cargoes from the ship or vessel and the port precincts to land-based means of transport and vice versa, and those performing work that is inseparable from or closely linked to the above activities (loading or unloading), such as movements within port precincts, for the purposes of storing or warehousing goods unloaded from or to be loaded on a ship or vessel. [32] Under *Gambia's* Labour Act, [33] any person employed in cargo handling in the port of Banjul is a dockworker. *Mexico's* Federal Labour Act defines dock work as public service labour involving loading, unloading, stowage, mooring, warehousing, cargo handling on the quay or on board ships, and connected work in ports and other areas under federal authority. [34]

[28] *Panama:* Act No. 34 of 26 September 1979 on the ports of Balboa and Cristóbal.

[29] *Romania:* see, in particular, Ordinance No. 22/1999 concerning the administration of ports and port services (ss. 10, 16 and 17).

[30] For example: *Australia* and *Singapore*.

[31] *Chile:* Labour Code, as amended by legislative decree of 7 January 1994 (s. 133).

[32] *Chile:* Directorate of Employment, Notice No. 5174/346 of 11 December 2000.

[33] *Gambia:* Labour Act (No. 12), 1990 (s. 56.01).

[34] *Mexico:* Federal Labour Act (s. 265).

Definition based on practice

107. Some countries have left it up to collective agreements to define the terms in question. [35] This approach has the advantage of involving the social partners directly in defining the activities to be included and the workers who are to benefit from the employment and conditions of work covered by the collective bargaining. Moreover, this approach is in the spirit of the two instruments, which envisage the consultation of employers' and workers' organizations concerned in drawing up and revising the definitions. In *Sweden*, for example, whereas a 1908 Ordinance defines a dockworker as a worker registered with an employment agency or a company as a permanent or casual dockworker, a detailed description of the tasks of dockworkers is included in the collective agreements concluded by the most representative organizations of dockworkers.

108. Definitions are also commonly found in the internal rules of port operators. [36] In *Benin*, the internal rules of the Société béninoise des manutentions portuaires (Benin Cargo-Handling Company), the country's sole port operator, define dockworkers in terms of their registration with the recruitment office in the country's only port and draws a distinction between professional dockworkers, who have priority in recruitment, and casual dockworkers.

109. Finally, some governments provided definitions in their reports without further explanation or merely indicate that they are based on practice. In general, the definition consists of a description in general terms of the tasks involved in cargo handling. [37] For example, the Government of *Denmark* indicated that although the legislation does not contain any definition, the term "dock work" must be interpreted as loading and unloading of containers in particular, and work in storage centres connected with the arrival and departure of ships. The term "dockworker" is defined as a worker recruited to perform unloading and loading work in connection with the arrival and departure of ships. In *Morocco*, in practice, the term "dockworker" means employees engaged in cargo handling and assembling and stripping unit loads.

2. Absence of a definition of the terms

110. Some governments indicated in their reports that national law or practice does not contain definitions of the terms in question. That is the case in

[35] For example: *Costa Rica, Ghana, Mauritania, Romania* (see para. 105), *Sweden, Tunisia* and *Turkey*.

[36] For example: *Burundi, Qatar* and *Syrian Arab Republic*.

[37] For example: *Bahrain, Belarus, Cuba, Egypt, Finland, Jordan, Republic of Korea, Mauritius* and *Norway*.

the following countries: *Algeria, Bulgaria, Croatia, Czech Republic, El Salvador, Estonia, Germany, Lebanon, Namibia, New Zealand, Oman, San Marino, Saudi Arabia, Seychelles, Slovenia* and *South Africa*. In *Austria*, neither national legislation nor collective agreements contain a definition. The only explanation given in collective agreements concerns the difference in status between permanent dockworkers and casual dockworkers, who do not enjoy job security and a guaranteed minimum income.

111. The process of identifying persons working essentially as dockworkers is intended to determine the available workforce. If the nature of the regularization of their employment and the stabilization of their earnings depends largely on the way in which the port is organized, the system should, according to the ILO instruments, involve the opening of a dockworkers' register.

B. Registration of dockworkers

112. Under *Article 3* of the Convention and *Paragraph 11* of the Recommendation, registers have to be established and maintained for all occupational categories of dockworkers, in a manner to be determined by national law or practice. Registered dockworkers must have priority, or even exclusivity, [38] of engagement. In return, they have to make themselves available for work (*Article 3, paragraph 3,* of the Convention and *Paragraph 16* of the Recommendation). The Recommendation also provides some clarifications concerning the purposes *(Paragraph 11)* and forms *(Paragraphs 12-14)* of registers.

113. There are several arguments in favour of registering dockworkers. First, modern cargo-handling methods increasingly require the use of multiskilled dockworkers, trained and able to use expensive equipment safely and efficiently. To ensure a constant supply of skilled personnel, it is essential to control access to the profession by an appropriate registration and allocation system. Furthermore, to gain the maximum benefit from the introduction of the new cargo-handling methods, it is vital to have the full commitment of the workers. This means offering them sufficient guarantees of employment and income. It is to be noted in this connection that, echoing the conclusions adopted by the tripartite technical meeting in Rotterdam, *Paragraph 11* of the Recommendation provides that the establishment or revision of registers is intended, in particular, to "operate schemes for the regularisation of employment or stabilisation of earnings and for the allocation of labour in ports".

[38] According to *Para. 15* of Recommendation No. 145: "No person should normally be employed as a dockworker unless he is registered as such. Exceptionally, when all available registered dockworkers are employed, other workers may be engaged."

114. Second, although the greatest difficulty created by the adoption of new cargo-handling methods is undoubtedly that they exacerbate any pre-existing problem of surplus labour in the ports, it is important to consider how to spread as widely as possible the risk of underemployment which could arise initially. The registration of dockworkers would make it possible to avoid imposing the cost of modernization arbitrarily on any particular worker who had previously been regularly employed.

115. However, the registration of dockworkers is not an alternative to the ideal situation in which they would enjoy or be guaranteed permanent employment. It has been a long-term objective to either guarantee dockworkers permanent employment, or failing that, at least regularity of employment or stabilization of their earnings, and registration has been the primary means of identifying workers for that purpose. At its Third Session (1949), the ILO's Inland Transport Committee, "being convinced of the need for providing greater regularity of employment for dockworkers and for ensuring an adequate supply of labour for the efficient performance of the work of the ports", stated that "registers of regular dockworkers should be established in the ports". [39] Similarly, the tripartite technical meeting in Rotterdam adopted conclusions that envisaged the establishment of registers for all occupational categories of dockworkers with a view to "prevent[ing] the entry of supplementary labour when work available is insufficient to provide an adequate livelihood to regular dockworkers" and "to operate schemes for the regularisation of employment or income, and for the allocation of labour in ports". [40] According to the same conclusions, "no person other than a registered dockworker should be employed on dock work". [41] The inclusion of provisions on the registration of dockworkers in the draft texts submitted to the 57th and 58th Sessions of the ILC was therefore not a matter of controversy and occasioned virtually no discussion.

116. The stabilization of employment in ports can only be achieved if there is an efficient system of allocating registered dockworkers. The efficiency of the system depends on several factors, such as the number of cargo-handling firms, the extent and organization of the port, and the diversity of cargoes handled. In modern ports handling a wide variety of cargoes through several cargo-handling firms, the allocation system must ensure that labour is used in the most efficient manner possible. To achieve this, it is necessary to determine the proportion of labour that must be employed regularly, while at the same time creating a reserve pool. Obviously the best solution is to be able to employ all

[39] Inland Transport Committee: resolution (No. 25) concerning the regularisation of employment of dockworkers, ILO, Brussels, 27 May 1949, para. 1.

[40] Tripartite Technical Meeting on Dock Labour: conclusions, ILO, Rotterdam, April 1969, para. 12.

[41] ibid., para. 16.

dockworkers regularly. However, when employment cannot be guaranteed on a regular basis, the most common practice is to distribute work between workers in regular or permanent employment and a reserve of casual workers. In this respect, the Recommendation provides for the possibility of establishing separate registers for those with more or less regular employment and those in a reserve pool *(Paragraph 14)*.

1. Systems for the registration of dockworkers

117. Certain questions need to be addressed when considering the establishment of a registration system. First, consideration must be given to whether the system is to be applied to all ports. In principle, in view of the relevant provisions of the Convention and the Recommendation, the reply must be affirmative. Even though it is not authorized by the Convention, some States may find reasons for exempting ports from the registration system. Maintaining a register has two major purposes: determining a number of dockworkers sufficient to ensure the rapid turnround of ships, and stabilizing the employment and earnings of workers. In some modern ports, however, such as those specially equipped to handle bulk cargoes, the dock workforce is smaller and mostly employed on permanent and a full-time basis. The absence of a register of dockworkers in such ports certainly has little impact in terms of employment stabilization programmes. Similarly, it may prove difficult to stabilize the employment of persons who work on a casual basis in handling cargoes in small ports with little or irregular traffic as a source of supplementary employment. Second, consideration must be given as to whether the volume of traffic and the qualified administrative staff are sufficient to justify the systematic application of an allocation system. The current trend to concentrate shipping traffic in a restricted number of "hub" ports tends in itself to stabilize the demand for labour in those ports, to the detriment of small ports. In this case, it may be preferable to begin by establishing an allocation system for the country's main port or a few major ports. In *Egypt*, the Ministry of Labour has decided to establish placement offices for dockworkers under the authority of municipal governors in the ports of *Alexandria*, *Said* and *Suez*. [42]

118. Finally, a crucial question to be considered is the determination of the workers to be registered. The first step is to calculate the number of the workforce to be registered and to select candidates, to the extent that their number exceeds requirements. The selection must be done scrupulously taking into account the commercial issues involved. In addition to the need to have skilled personnel available, for port operators this involves improving the quality of service as much as possible to satisfy an ever more demanding clientele. To this end, objective criteria must be defined, if possible with the agreement of the

[42] *Egypt:* Ordinance (No. 19) of 1978.

employers' and workers' organizations concerned. [43] In particular, in line with the persons covered by the Convention and the Recommendation, [44] this may mean retaining only those who obtain their main annual income from dock work, or who have a certificate of medical fitness or relevant training. Registration generally results in the issuing of a professional identity card.

119. Under *Paragraph 15* of the Recommendation, dockworkers should only be recruited among those registered as such. This principle is generally followed.[45] In *Romania*, for example, port operators must employ workers registered with the harbourmaster's office and in possession of work permits issued by the latter. [46] A measure frequently adopted consists, first, of registering the required number of workers in a main register and, second, registering the surplus labour in a reserve register. The rights and obligations differ for the two registers. In general, privileges are granted to workers in the main register, such as priority in recruitment. [47]

120. The Convention and the Recommendation do not require any particular forms of register. The form of the register is to be determined by national law or practice, [48] as there are many solutions often depending on local circumstances. [49]

Operation of the scheme by an official agency

121. A frequent method is to entrust the management of the dockworkers' employment scheme to an independent public body. [50] In *Costa Rica*, a register

[43] For example: *Barbados*, *Belgium* and *Norway*.

[44] *Art. 1, para. 1*, of Convention No. 137 and *Para. 1* of Recommendation No. 145.

[45] For example: *Bangladesh*, *Belgium*, *Egypt*, *Ecuador*, *Gambia*, *Indonesia*, *Italy*, *Japan*, *Malta*, *Oman* and *Peru*.

[46] *Romania:* under Ordinance No. 22/1999 (ss. 18 and 19).

[47] For example: *Barbados*, *Belgium*, *Benin*, *Burundi*, *Ghana*, *Panama*, *Sweden* and *Tunisia*. The Government of *Lithuania* indicates that the establishment of a reserve register is currently under discussion at the request of cargo-handling enterprises.

[48] *Art. 3, para. 1*, of Convention No. 137 and *Para. 11* of Recommendation No. 145.

[49] For example, *Costa Rica:* the system of control of dockworkers varies from port to port. The collective agreement of the Costa Rican Institute for Pacific Ports (INCOOP) provides for a list of accredited permanent workers supplemented by a monthly list of casual workers (ss. 62 and 75 of the agreement). In the case of the two ports on the Atlantic coast, for which the Committee for Port Administration and Economic Development of the Atlantic Coast (JAPDEVA) is responsible, there is no register for budgetary reasons. Dockworkers are thus freely chosen by operators as the need arises. *Greece*: dock work is administered by commissions regulating loading and unloading in ports, apart from the ports of Pireus and Salonika, where the operators are under the responsibility of port organizations (POSSA and POPSA). *United States:* according to the Government's report, issues relating to the registration of dockworkers' and the revision of registers are covered by collective agreements at state level.

[50] For example: *Ecuador*, *Egypt*, *Gambia*, *Pakistan*, *Peru* and *Uruguay*.

of permanent accredited dockworkers and a monthly list of casual workers is established under the collective agreement of the Costa Rican Institute for the Pacific Ports (INCOOP). Permanent dockworkers benefit from a guaranteed minimum wage. In *Indonesia*, a Decree makes the Dockworkers' Foundation (UKA) responsible for the management of the dock workforce. [51] In *Japan*, employers are obliged to register dockworkers with the Public Safety and Employment Office, which issues them with a work certificate.[52] Under *Malta's* national legislation, the dockworkers' register is established and maintained by the maritime authority. The status of dockworkers and the methods of allocating work are also regulated by law. [53] In practice, the maritime authority acts as an employment agency by making dockworkers available to employers, in return for payment, and then paying the dockworkers itself.

Operation by collective agreement or joint body

122. In a number of countries, the social partners agree, through collective agreements, on registration procedures. [54] It may also be decided to entrust responsibility for the management of the workforce to a joint body in each port.[55] In *Barbados*, a port registration and disciplinary committee, composed of representatives of employers' and workers' organizations, is responsible for selecting, registering and removing dockworkers. There are registers of casual and regular dockworkers. In *Belgium*, a joint subcommittee in each port, under the authority of the national joint ports committee, issues accreditation to dockworkers. A Royal Decree divides dockworkers into general workers and logistical workers, a classification that is to be adopted in all Belgian ports. Although some freedom is allowed to employers in recruiting, it is reported that, in practice, employers recruit the same workers every day. [56] In *Brazil*, the

[51] *Indonesia:* Joint Decree (No. PM.1/05/Phb.78) of the Ministry of Transport and the Ministry of Labour, International Migration and Cooperatives on regulation, organization, development and management of dockworkers.

[52] *Japan*: Law (No. 40 of 1988) on Dock Work (ss. 9 and 10).

[53] *Malta:* Ordinance (XV) of 1962 on dockworkers as amended in 1991.

[54] For example: in *Mauritania* under the terms of the codicil of 13 February 1974 to the general collective agreement for transport auxiliary workers of 8 February 1962, the recruitment and placement of dockworkers are carried out by the Port Labour Office (BMOP); in the *Russian Federation*, a collective agreement in the maritime transport sector for 2000 provides that employers shall establish registers of workers, in collaboration with trade unions (agreement concluded pursuant to Federal Act No. 176-F3 of 24 November 1995 on collective agreements and arrangements between the Federation of Russian Maritime Transport Workers' Trade Unions, the Russian Federation of Water Transport Workers, the Union of Russian Shipowners and the Ministry of Transport.

[55] For example: *Bangladesh* (for the ports of *Chittagong* and *Chalna*), and *France*.

[56] Information provided in the government report.

establishment of a Manpower Management Board (OGMO) is envisaged in each port (sections 18-25 and 27 of Act No. 8630 of 25 February 1993), the duties of which include keeping registers of dockworkers who are regularly available and those casual workers who are authorized to be employed. In the *United States*, registration and upward or downward adjustments of the workforce are the responsibility of the Joint Port Labor Relations Committee established in each West coast port under collective agreements between the Pacific Maritime Association (PMA) and the International Longshore and Warehouse Union (ILWU). On the East coast, the Waterfront Commission of New York Harbor has been established, for example, to manage the dock labour force in the ports of New York and New Jersey. In *Romania*, employment and vocational training agencies, consisting of employers' and workers' representative organizations, formed in each port have the task of providing and training the workforce. [57]

Registers maintained by employers

123. The task of registering dockworkers may fall to employers. [58] Cargo-handling firms in ports, like other employers, are required to maintain registers of persons employed by them and to keep them available for inspection by the labour inspectorate or the tax authorities. In *Benin's* only port, relations between the cargo-handling firm and dockworkers are governed by the company's internal regulations. [59] Section 3 of the internal regulations provides for the registration of professional and casual dockworkers by the recruiting office. Professional dockers have priority in recruitment. The revision of the registers appears, according to the Government's report, to be based on tax records used to control the regularity of dockworkers' employment. *Burundi* has only one port, Bujumbura. Registration of dockworkers is different for contractual and daily workers. In all cases, it is up to the port operator, "Exploitation du port de Bujumbura" (EPB) to register dockworkers. [60] Contractual workers are placed on a register that is only revised when a worker resigns or dies, whereas the register of daily workers is revised every day depending on the level of ship traffic. In its observations, the Netherlands Trade Union Confederation (FNV) expressed concern at the unilateral decision taken by employers in the port of Rotterdam to withdraw from the system of registration, which had nevertheless been established by collective agreement several years before. According to the

[57] *Romania:* under Government Ordinance No. 22/1999 (s. 19 et seq.).

[58] For example: *Algeria, Bulgaria, Finland, Jordan, Kuwait, Lebanon, Poland, Qatar, Saudi Arabia, Seychelles, Sweden* and *Yemen*.

[59] Société béninoise de manutentions portuaires (SOBEMAP): company's internal regulations registered 5 July 1991 by the Directorate of Labour and Social Affairs.

[60] Internal regulations of the "Exploitation du port de Bujumbura" (EPB).

FNV, negotiations are stalled by the intransigence of the employers, who no longer want to assume the responsibility for keeping registers.

Registers maintained by workers or their organizations

124. According to the reports examined, no country entrusts the allocation system to the workers themselves or their organizations. However, the Federal Labour Act in *Mexico* requires trade unions to draw up and submit a list of available workers to cargo-handling enterprises. [61]

2. Absence of registers

125. Several governments indicated in their reports that dockworkers now enjoy permanent employment, whether or not by the same employer. [62] This trend could explain the absence or abandonment of registration in those countries. Registers are maintained by employers only for the purposes of their personnel management services, labour inspection or tax reasons. [63] In *Turkey*, dockworkers who are seeking work can register with the public employment service (IŞKUR) in the same way as other jobseekers. However, no specific register has been established.

126. The following governments indicated in their reports that dockworkers are not registered: *Australia*, *Bahrain*, *Belarus*, *Colombia*, [64] *Cuba*, *El Salvador*, *Estonia*, *Germany*, *Namibia*, *New Zealand*, *Nicaragua*, [65] *Philippines*, *Portugal*, *Singapore*, *Thailand* and *United Kingdom*.

127. The absence of dockworkers' registers does not mean that this category of worker does not enjoy trade union representation and appropriate protection measures. Several countries which have not introduced a dockworkers' registration system nevertheless have specific regulations on dock work as well as regulations concerning conditions of employment or conditions of work. [66] Some governments, also, indicated that trade union membership in itself provided sufficient guarantees of protection of their interests. [67]

[61] *Mexico:* Federal Labour Act (s. 274).

[62] For example: *Burundi*, *Costa Rica*, *Cuba*, *Denmark* (for the ports of *Copenhagen* and *Greenland*), *Egypt*, *Indonesia*, *Madagascar* (in certain enterprises) and *Qatar*.

[63] See, in this respect, para. 121.

[64] According to the report of the Government of *Colombia*, the dockworkers themselves rejected the establishment of registers.

[65] The Government of *Nicaragua* indicates in its report that in view of the privatization of ports, it is envisaged to return to the system of dockworkers' registration.

[66] For example: *Namibia*, *Philippines*, *Portugal* and *Thailand*.

[67] This point was made in the reports of the Governments of *Denmark* and *Republic of Korea*.

128. The Committee regrets the fact that a number of the reports examined did not address the question of the registration of dockworkers.

Section II. Matters covered by the instruments

129. Even where there is a registration and allocation system, dockworkers may still be concerned by the fear of unemployment or reduced employment. This fear could be explained in the past by the occasional nature of their work. Nowadays, dockers have legitimate concerns about the widespread adoption of new port management methods and modern cargo-handling techniques and their effects on the use of labour. The institution of a system of the regularization of employment and stabilization of earnings, which exists in most of the world's ports, owes as much to the need to guarantee the employment and earnings of dockworkers, reflecting the particular nature of their work, as to the principle enshrined in the preambles to the two instruments that the benefits of technical progress should be enjoyed by dockworkers.

A. Regularization of employment

130. *Article 2* of the Convention provides that "it shall be national policy to encourage all concerned to provide permanent or regular employment for dockworkers in so far as practicable" *(paragraph 1)*, but that "in any case, dockworkers shall be assured minimum periods of employment or a minimum income, in a manner and to an extent depending on the economic and social situation of the country and port concerned" *(paragraph 2)*. The Recommendation also provides for certain measures designed to guarantee employment, such as "employment for an agreed number of hours or shifts per year, per month or per week [...]" *(Paragraph 8(2)(a))*.

131. In the past, dockworkers' employment opportunities depended essentially on widely fluctuating movements in ports. To respond rapidly to peaks of activity that could occur suddenly, it was necessary to have an adequate reserve of workers. The fundamental problem was maintaining this reserve at a sufficient level while avoiding creating a surplus of workers that would result in underemployment at times of normal or slow operations. Several variables inherent in dock work, such as the type of cargo, the mechanical equipment available in the port or on the ship, or the number of handling operations required, could also influence the volume of employment. From the outset, one of dockworkers' most pressing demands was the regularization of employment, as they did not want to suffer the disadvantages of fluctuating casual employment. Employment insecurity and the consequent irregularity of earnings

had an unwelcome influence not only on dockworkers' morale, but also on their standard of living and that of their families. [68]

132. The prospects for the regularization of dockworkers' employment have been strongly influenced by the development of new cargo-handling methods in the ports where they work. In order to have a trained workforce able to handle sophisticated equipment efficiently, it has been necessary in return to guarantee continuity of employment or a minimum wage. Furthermore, the greater scheduling precision of movements in ports has made it easier to forecast the number of workers needed and has reduced the need to use casual labour.

133. A first step in the regularization of employment consists of limiting to a certain level the number of dockworkers competing for work. The method used to adjust the workforce to the required level is more or less the same in all the countries and ports considered. It consists simply of granting a priority right to employment as dockworkers to a defined number of workers. To this end, workers are registered and receive work cards or other forms of identification allowing them to be recruited, or at least to enjoy priority for employment. The Committee refers on this issue to its examination of the various systems of registration above (see paragraphs 112-128). In this regard, the Committee recalls that some governments have indicated that dockworkers in their country benefit from permanent employment. [69] In *Costa Rica*, the collective agreements concluded by the two main port administrations, the Costa Rican Institute for the Pacific Ports (INCOOP) and the Committee for Port Administration and Economic Development of the Atlantic Coast (JAPDEVA), provide for the permanent employment, to the extent possible, of all dockworkers. The Government of *Egypt* indicated that, since 1965, dockworkers have been employed regularly and permanently by the cargo-handling firm, the United Arab Cargo Handling Company. The 1992 reform of the port industry in *France* [70] had the effect of offering contracts without limit of time to some 80 per cent of dockworkers, which is equivalent to a guarantee of permanent work. The Government of *Japan* indicated that a system of a reserve of permanent dockworkers was established in 1989. [71] These workers are allocated to companies on request.

[68] See on this subject: ILO: *Regularisation of employment of dockworkers*, Inland Transport Committee, Report II, Third Session, ILO, Brussels, 1949.

[69] For example: *Burundi, Cuba, Denmark* (for the ports of *Copenhagen* and *Greenland*), *Estonia, Greece* (for the ports of *Pireus* and *Salonika*), *India* and *Indonesia*.

[70] *France:* Act No. 92-496 of 9 June 1992 and implementing decrees of 12 October 1992 (Book V of the Maritime Ports Code) amending Act No. 47-1746 of 6 September 1947 on the organization of cargo handling in maritime ports and subsequent texts.

[71] ILO: Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry, *Note on the Proceedings*, ILO, Geneva, 20-24 May 1996, TMPI/1996/10.

134. Some employment stabilization systems may even provide for the registration of two groups of workers enjoying priority, with intermittent workers in the second priority group only being taken on after workers in the first group, but before any other workers that might be recruited in the case of a real shortage of labour. [72]

135. In most ports, it is still necessary to have casual workers available. The Committee has already had occasion to point out that the proportion of casual workers is not insignificant. The International Transport Workers' Federation indicated in its 1995 report that over two-thirds of the replies to its questionnaire reported the existence of casual work, even if it generally only affected a small proportion of workers (normally fewer than 10 per cent of the total workforce). Moreover, the more casual work is used, the more it is regulated. [73] Among casual workers, certain groups can be distinguished for whom irregular work is not a disadvantage, and particularly those who work in the docks to earn a secondary wage or those who are working while they look for another job.

136. The New Zealand Council of Trade Unions (NZCTU) expressed its concern at the casualization of the conditions of dockworkers since the privatization of the commercial functions of ports in 1985. The system of placing dockworkers has been deregulated. The NZCTU stated that the application of the Employment Contracts Act has had a destructive effect on the port industry. The constant effort to make profits has led to the development of a system of casual labour which continues to have a harmful effect on the safety, health and vocational training of dockworkers. Casualization is also affecting the families of dockworkers and their social lives. The NZCTU referred to the 1995 Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry of selected Asian and Pacific countries *(Pattaya, Thailand)* emphasized the need to limit casual labour as much as possible, and it regrets that no steps have been taken in this respect by the New Zealand Government. In response to the NZCTU the Government indicates that there is no statistical evidence that casualization has had an impact on the health and safety of workers. The Government also indicates that the social partners have been consulted for the past two years on safety guidelines.

137. In respect of these differing views, the Committee draws attention to the fact that one of the essential elements of Convention No. 137 and Recommendation No. 145 is the objective of ensuring dockworkers regular, if

[72] *Belgium:* system of accreditation of port workers in categories A and B, by virtue of Royal Decree of 19 December 2000; *El Salvador:* Statutes of the Autonomous Port Executive Committee (CEPA) (s. 9).

[73] International Transport Workers' Federation: *Reform and structural adjustment in the world's ports: The future for labour and the unions*, London, 1995.

not permanent employment and a stable income and, for this purpose, to extend the system of protection to casual workers. One of the reasons for registration systems is to be able to ensure that adequate training in cargo-handling is available to the workforce. The Committee has noted above that the use of modern equipment requires the employment of a skilled, trained and responsible workforce. The systematic use of casual labour cannot offer the same guarantees.

138. One possible approach to improving stability consists of providing for the employment of dockworkers for an agreed period, or for a minimum period each week or month, through regulations or collective agreements. [74] In *Barbados*, under collective agreements, dockworkers registered in the port of *Bridgetown* enjoy guaranteed work of 40 hours per week. The agreements also allow the trade union to establish a reserve list of workers who can be hired if the volume of work so requires. The Government of *Morocco* indicates in its report that collective agreements guarantee a monthly period of work to dockworkers. According to the report of the Government of *Oman*, national law and practice guarantee that dockworkers have a contract of employment of at least one year and receive an annual wage, even in the absence of work.

139. However, the introduction of a system of registration and allocation is not always sufficient to guarantee the employment or incomes of dockworkers. Stabilizing employment for a given number of workers often means reducing the labour surplus. Analysis of the replies to the ILO's 1995 questionnaire on employment trends shows that workforces in ports have declined considerably since the early 1990s. [75] The measures taken to reduce the workforce do not vary from one port to another around the world. They consist of encouraging early retirement, retraining and staff reductions. A State which resorts to such adjustment measures must take into account both their social and financial cost. In *Australia*, the cost of reform in the port sector between 1989 and 1992 was $420 million for the Government and the sector concerned, much of that sum being paid in the form of termination benefits. [76] Many industrial countries have resorted to early retirement schemes to reduce the workforce. [77] The Committee notes that the reports examined did not provide precise details of the termination schemes which governments may have adopted. It therefore reviews the various measures for the reduction of the workforce to which it has just referred in paragraphs 179-188 below.

[74] *Denmark* (for ports other than *Copenhagen* and *Greenland*).

[75] ILO: Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry, ILO, Geneva, 20-24 May 1996, TMPI/1996.

[76] ILO: Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry, *Note on the Proceedings*, ILO, Geneva, 20-24 May 1996, TMPI/1996/10.

[77] For example: *Australia, Japan, Netherlands, Spain* and *United Kingdom*.

B. Stabilization of incomes

140. Most schemes for stabilizing dockworkers' employment [78] contain provisions on a minimum guaranteed income for regular workers.

141. Under *Article 2, paragraph 2*, of the Convention, "dockworkers shall be assured [...] a minimum income, in a manner and to an extent depending on the economic and social situation of the country and port concerned". The Recommendation provides in *Paragraph 8* some examples of measures that might be taken for this purpose. The guaranteed income could take the form of payment for employment for an agreed number of hours or shifts per year, per month or per week. The guarantee could take the form of attendance money for dockworkers who are available for work but who have not been employed. Finally, the last form of guarantee suggested by the Recommendation is the payment of unemployment benefit when no work is available. All these forms of income guarantee, which the Committee examines in the following paragraphs, are drawn from measures taken by the various countries surveyed by the ILO since 1949. [79]

142. The guaranteed minimum wage is often subject to the obligation for workers to present themselves regularly for work. This attendance allowance, which is the simplest guarantee, offers workers a degree of economic security and is some reward for acceptance of the obligation to be available for work. In *Pakistan*, each registered dockworker is entitled to a minimum monthly guaranteed income corresponding to 18 days' work and to an attendance allowance for 12 days. [80] In *Tunisia*, a permanent professional dockworker who attends for engagement without being hired receives, after signing out on completion of the hiring, an indemnity equal to 50 per cent of the basic salary for a shift. [81]

143. When so laid down in national legislation, the payment of unemployment benefit in the event of a period without work is not generally a right that is specific to the port sector. Dockworkers can only obtain payment of such benefits on the same conditions as other workers. The provision of these benefits may be subject to certain conditions, such as a sufficient period of

[78] Especially those introduced in the following countries: *Austria, Belgium, Brazil, Costa Rica, Cuba, Denmark* (for the ports of *Copenhagen* and *Greenland*), *France, Indonesia, Nicaragua, Oman, Qatar* and *Russian Federation*.

[79] ILO: Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry, *Note on the Proceedings*, ILO, Geneva, 20-24 May 1996, TMPI/1996/10.

[80] According to the Government's report.

[81] *Tunisia:* National collective agreement on ports and docks, concluded on 29 April 1975, as amended in 1999.

service or prior registration with the public employment services. [82] More specifically, some countries provide for the payment of unemployment benefit to dockworkers for days when there is no possibility of work. In general, the guarantee offered is a percentage or a proportion of the wage that would normally have been received. [83] In *Belgium*, dockworkers in subgroup A who have not been hired are entitled, on the one hand, to payment of an unemployment benefit by the National Employment Office and, on the other hand, to an attendance allowance provided by the Subsistence Guarantee Fund [84] of the port where they work. The total amount of these two benefits, the main daily unemployment benefit and the attendance allowance, is equal to 66 per cent of the current basic wage. Dockworkers in subgroup B are not entitled to the attendance allowance. [85] According to the report of the Government of the *United States*, a basic wage equivalent to a weekly period of work of 28 to 38 hours is guaranteed to registered West coast dockworkers under a collective agreement. In *Italy*, under section 17 of the Ports Act, No. 84 of 28 January 1994, an income guarantee fund has to be established to cover the absence of work.

144. In some countries, a weekly, monthly or annual wage is guaranteed, whether or not there is actually any work. [86] This guaranteed wage seems to be the natural corollary of permanent employment. In *Cuba*, dockworkers receive a guaranteed wage equivalent to 70 per cent of the normal wage in periods without work. [87] Permanent workers in the ports of *Nicaragua* receive a fixed monthly wage. Other workers, whose employment depends on the volume of shipping traffic may, as an alternative, perform another activity in the port. In all cases, however, the wage must not be less than the minimum laid down in section 85 of the Labour Code and in the Minimum Wage Act. [88] This minimum wage is fixed

[82] For example: *Bulgaria* (ss. 67-71 of the Unemployment Protection and Employment Promotion Act).

[83] For example: in the *Russian Federation*, the Labour Code provides that workers who, for reasons beyond their control, are not in a position to fulfil the obligations under their contract, should receive from their employer remuneration equivalent to two-thirds of their wages for the period of inactivity (s. 94). In *Romania*, registered but unemployed workers should receive a monthly indemnity equivalent to 75 per cent of the gross basic wage (Government Ordinance No. 22/1999, s. 36).

[84] This Fund, which is jointly managed, is funded by employers' contributions.

[85] See para. 105 for the distinction between the two subgroups.

[86] For example: *Austria* (for permanent dockworkers only), *Costa Rica*, *Spain* (the final provisions of the II Sectoral Agreement provide for an active employment project that would affect 1,200 dockworkers who would benefit from a guaranteed annual income of 195,000 pesetas with an annual increase of 4 per cent from the third year until the retirement age) and *Mauritania*.

[87] Information supplied by the Government in its report.

[88] *Nicaragua*: Labour Code, Act No. 185 of 30 October 1996, and Minimum Wage Act No. 129 of 24 May 1991.

by the National Tripartite Minimum Wage Commission. In *Oman*, under the Labour Act and the Regulations of the Port Services Corporation, dockworkers have a contract of employment which covers a period of at least one year and they receive a monthly wage. [89] In *Sweden*, permanent dockworkers receive a guaranteed monthly basic wage. Bonuses vary from port to port. Some collective agreements may also provide for a minimum daily income for casual dockworkers.

C. Vocational training

145. Under the terms of *Article 6* of the Convention, "Each Member shall ensure that appropriate [...] vocational training provisions apply to dockworkers." The Recommendation prescribes that "Laws and regulations concerning [...] vocational training applicable to industrial undertakings should be effectively applied in ports, with such technical variations as may be necessary ..." *(Paragraph 31)*. Furthermore, with a view to improving the efficiency of work in ports, agreements between employers or their organizations and workers' organizations, with the participation of the competent authorities, should envisage "comprehensive vocational training schemes, including training in safety measures" *(Paragraph 29(b))*, or "work organisation and training designed to enable dockworkers to carry out several related tasks" *(Paragraph 29(f))*. The Committee wishes to stress the close connection between any employment policy and vocational guidance and training programmes. It recalls that this principle is enshrined by the ILO in the Human Resources Development Convention, 1975 (No. 142), and the accompanying Recommendation, 1975 (No. 150), but that the link is clear in all the ILO's instruments on employment. [90]

146. The Committee has indicated above that technical progress requires port personnel to be given more responsibility. Dockworkers work more independently and are more highly skilled today than they used to be. In some modern ports, a single dockworker can nowadays take full responsibility for the movement of cargoes which in the past would have required a whole gang. These new skills and responsibilities that dockworkers may be required to assume change their skills profile.

[89] *Oman:* Sultan's Decree No. 34/73, Labour Act and amendments (s. 53) and Regulations of the Port Services Corporation.

[90] See in particular the Employment Policy Convention, 1964 (No. 122), and Recommendation, 1964 (No. 122); the Special Youth Schemes Recommendation, 1970 (No. 136); and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and Recommendation, 1983 (No. 168).

147. Once it is recognized that the efficient operation of a modern port depends on the presence of a skilled workforce, it has to be concluded that this workforce must be provided appropriate training. As early as 1951, the Inland Transport Committee emphasized this point, indicating that "in modern ports the handling of cargo, especially mixed cargo, calls for a certain amount of experience and knowledge on the part of the dockworkers". It therefore invited the Governing Body "to draw attention of governments and of the employers' and workers' organizations concerned to the importance of an adequate training of dockworkers for the handling of mixed cargo in modern ports". [91]

148. At the Tripartite Meeting in 1996, everyone agreed on the essential nature of training for dockworkers. [92] The first argument in favour of training is undoubtedly the reduction in the risk of accidents to which training in safe cargo-handling methods can contribute. While the training of dockworkers, from the employers' point of view, helps to improve productivity by speeding up cargo handling, from the workers' point of view, it can alleviate the negative effects of port reforms by enabling them to adapt their skills to changes in management and technology, in particular by preparing them to adapt to a wide range of related activities.

149. In a previous General Survey, the Committee noted the complexity of the material scope of application involved in the global concept of promoting the value of human resources, and the multiplicity of responsible authorities. [93] The Committee noted that the "improvement of information on the supply as well as the demand for vocational training at all levels was considered to be a field where concerted action by all interested parties was of vital importance for the development of balanced and efficient vocational training approaches". [94] Although public employment services play a predominant role in vocational training in many countries, this can also be provided by specialist institutions and services. The Convention and the Recommendation prescribe that public authorities should play a role in training activities. It is also common for the requirement of training for dockworkers to be set out in regulations. [95] For example, under section 133 of *Chile's* Labour Code, workers must undergo training in a technical organization to obtain the status of dockworker awarded

[91] ILO: Inland Transport Committee, Fourth Session: resolution (No. 50) concerning the training of dockworkers, *Official Bulletin*, Vol. XXXIV, No. 2, 20 Dec. 1951, pp. 98-99.

[92] ILO: Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry, *Note on the Proceedings*, ILO, Geneva, 20-24 May 1996, TMPI/1996/10.

[93] See ILO: *Human resources development: Vocational guidance and training, paid educational leave*, ILC, 78th Session, 1991, Report III (Part 4B).

[94] ibid., para. 95.

[95] For example: *Australia, Belgium, Brazil, Indonesia, Nicaragua, Philippines* and *United Kingdom*.

by the National Training and Employment Service (SENCE). On passing the examination, the worker is issued with a work permit by the Maritime Authority.[96] In some countries, vocational training is more likely to be included among the matters covered in collective agreements.[97] At the tripartite technical meeting in 1996, it was considered that, although training needs and concepts vary considerably depending on the country, organization and port activities, the public authorities in developing countries should assume a much broader role and much greater responsibility in providing financing and facilities.[98]

150. The Convention and the Recommendation do not prescribe how training should be provided, or whether training should be in-house or external, or whether it should target dockworkers in general or be adapted to each enterprise. The methods will depend on a variety of factors, such as the availability, existence and cost of training institutions, the volume of cargo handled and the extent to which the skills taught are really suited to the enterprise. The involvement of the public authorities in training activities is not therefore always necessary, especially when the various enterprises concerned in the port industry collaborate in this area. In the *United Kingdom*, in addition to the regulations on occupational safety and health, an organization gathering together the country's main ports and the various actors in the industry lays down authoritative codes of conduct, especially on safety and training issues.[99]

151. In general terms, whether training is provided by public bodies or directly by the private sector, the Committee has found that the involvement of employers' and workers' organizations in the design, implementation and evaluation of training programmes is widespread, as provided for by regulations or collective agreements, or within a consultative body. In this respect, emphasis should be placed on the need to train motivated workers at all levels fully capable of assuming their new responsibilities.

152. Countries which have difficulty in providing sufficient and appropriate training to meet the constantly changing training needs arising from technical and structural change should be able to obtain appropriate technical assistance from the ILO. Such assistance can take different forms (identification of needs, training of trainers, creation of training centres, provision of training materials, etc.). Many port authorities in developing countries have established

[96] *Chile*: Supreme Decree No. 48 of 1986 (s. 19), as amended by Supreme Decree No. 90 of 13 September 1990 of the Ministry of Labour and Social Security.

[97] For example: *Costa Rica*, *El Salvador*, *Japan* and *Pakistan*.

[98] Statement by the Employers' group.

[99] *United Kingdom*: Ports Safety Organisation Technical Services Ltd., founded in 1992.

training centres in the framework of technical assistance projects developed by the ILO, notably under the Portworker Development Programme. [100]

153. While a training programme may, on the one hand, make it possible to adapt the skills of dockworkers to the new technological demands, it may also be used to retrain dockworkers, which is particularly important given that the sector is undergoing large-scale structural adjustment. Retraining helps dockworkers to strengthen their mobility on the labour market. Dockworkers who are subject to workforce reductions should, according to the terms of the Recommendation *(Paragraph 18(2))*, be helped by the public authorities to find employment. Although outside the strict purview of the Recommendation, it is desirable that the port industry itself would also participate in assisting dockworkers to find employment. According to the reports, retraining programmes are rare in South Asia, Africa and Latin America. [101] At the 1996 Tripartite Meeting, only *Argentina* and *Japan* reported that retraining programmes had been established. Only two of the reports received mentioned retraining programmes for dockworkers. [102] More generally, following its examination of the reports, the Committee regrets the lack of information provided by governments in their reports on this crucial issue of vocational training.

D. Working conditions

154. An immediate corollary of the modernization of equipment and working methods in the port industry should be an improvement in the social situation of dockworkers, not only because of more stable employment and incomes, but also as a result of better earnings and other benefits. In this connection, the Committee refers to the wording of the Preambles to the Convention and the Recommendation whereby dockworkers should share in the benefit secured by the introduction of new methods of cargo handling and that, accordingly, the introduction of such methods should be accompanied by measures to ensure stabilization of employment and earnings and to improve their conditions of work. The Recommendation also suggests that the regulations applicable to industrial enterprises concerning safety, health, welfare and vocational training should apply to dockworkers as well. Finally, it envisages

[100] On this point, the Committee refers to para. 88, especially the list of countries in footnote 41 of Chapter I.

[101] ILO-ARTEP (1987) and conclusions of a joint ILO/UNCTAD Workshop for Training Officers in Ports (Montevideo, Uruguay, Mar. 1995).

[102] *Indonesia* and *Japan*.

that dockworkers should benefit from standards as regard working time not less favourable than those applicable to other workers.[103]

155. The first issue concerns the scope of application of labour legislation in relation to the nature of dock work. In general, the principles governing the contract of employment and other matters, such as wages, working time and safety and health, are fixed by legislation and apply to all employees, or to those in the industrial sector (normally including transport) or the commercial sector. In that case, dockworkers are protected by these legislative provisions, subject to any derogations.[104] Given the nature of dock work, it is hardly surprising that a number of member States have either adopted specific regulations,[105] or have left the question of conditions of work to collective agreements.[106] For some countries,[107] dockworkers' conditions of work are regulated both by legislation (industrial relations, safety and health) and by collective agreements (remuneration, working time).

156. The limited context of this survey precludes a detailed examination of dockworkers' conditions of work, mainly for the reasons given above, but also because the information provided in governments' reports on the specific measures adopted for the port sector was generally very brief. This part will therefore deal only briefly with some of the most frequently raised issues.

1. Remuneration

157. While, in the Convention, the question of dockworkers' incomes is only addressed to emphasize the need to guarantee a minimum income *(Article 2, paragraph 2)*, the Recommendation, on the other hand, deals with the issue in several of its provisions, in particular from the angle of its relationship to the introduction of new methods of cargo handling *(Paragraph 34)*. Even though the Committee has indicated that cargo-handling activities in ports are currently increasingly capital-intensive, to the detriment of labour, it is still true that dockworkers' wages account for a major part of port operating costs. In any case, the wage rates fixed for dockworkers should at least be comparable with

[103] *Part VI* (Conditions of work and life) of the Recommendation.

[104] The following countries indicated that they do not have any specific regulations on dockworkers' conditions of work: *Bahrain, Bulgaria, Colombia, Czech Republic, Egypt, Estonia, Germany, Indonesia, Japan, Republic of Korea, Kuwait, Lebanon, Lithuania, Morocco, Namibia, New Zealand, Oman, Qatar* (except for vocational training), *Russian Federation, Slovenia* and *Yemen*.

[105] For example: *Bangladesh, France* and *India*.

[106] For example: *Italy, Poland* (Dockworkers' Charter) and *Tunisia*.

[107] For example: *Australia, Austria, Belgium* (the conditions of work of dockworkers are determined by joint subcommittees in each port but cannot derogate from the rules laid down by the Joint Ports Committee), *Brazil, Costa Rica, Denmark, Greece, Hungary, Malta* and *Turkey*.

those in other jobs requiring a comparable level of effort, skill and responsibility. In today's modern ports, dockworkers must be trained and multiskilled, able to operate various kinds of equipment and able to take decisions. In these conditions, paying dockworkers, as in the past, at the same rate as labourers or unskilled workers does not take into account the improvement in the quality of dock labour and the special skills acquired in modern terminals. In other terms, a rise in the level of dockworkers' skills should be matched by an increase in their wages. Observance of this principle is all the more crucial when it is considered that a port's activities and their economic effects depend essentially on these skills. It is not therefore surprising to note that dockworkers' remuneration in some ports is at the same level as that of higher management.

158. The question of dockworkers' remuneration may be subject to specific regulations, a collective agreement, [108] be fixed by the enterprise, [109] or it may be covered by legislation applicable to other workers. The issue may also be addressed by a combination of these methods.[110]

159. In the majority of countries, dockworkers are paid essentially on a time basis. Modern ports, for reasons of productivity, or under the pressure of competition from neighbouring ports, may operate 24 hours a day, seven days a week. In such cases, dock work is usually in shifts, and has therefore to be performed at the weekend or outside normal hours. A premium may be paid in compensation. Some countries have introduced piecework remuneration schemes. [111] In *Burundi*, only casual dockworkers are paid on a tonnage or job basis. The internal rules of two port operators in the *Syrian Arab Republic* provide for bonuses based on the quantity of cargo handled.

160. The level of remuneration should be high enough to allow dockworkers to live decently while working normally, without doing overtime or being dependent on special bonuses or allowances. Even though it must be borne in mind that the social and economic situation, which differs in each country, plays an essential role in determining the minimum wage, the Committee wishes to recall that the ILC adopted an international labour Convention which recognizes the principle that "in ascertaining the minimum standards of living, account shall be taken of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education".[112] The factors to be taken into account in determining the level of minimum wages, according

[108] For example: *Algeria, Benin, Italy, Mauritania, Tunisia* and *United States*.

[109] For example: *Burundi* (port operator "Exploitation du port de *Bujumbura*" (EPB)).

[110] For example: *Belarus*.

[111] For example: *Malta* (except for container handling) and *Seychelles*.

[112] Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), *Art. 5*.

to another ILO instrument, should include both "the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups", and "economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment". [113] Many countries have regulations providing for a minimum income which, as the Committee has already indicated, is a crucial element in stabilizing the employment of dockworkers. [114] In the *Syrian Arab Republic*, for example, a guaranteed monthly income is assured in the ports of *Lattaquia* and *Tartous*. In all cases, bonuses and other allowances may be added to the basic income.

2. Working time

161. Only the Recommendation considers the question of standards concerning dockworkers' working time (hours of work, weekly rest, holidays with pay, etc.), and provides that they should be not less favourable than those normally granted to industrial workers *(Paragraph 32)*. Any general regulations on working time should, in principle, apply to dockworkers, subject to any necessary reservations reflecting the specificities of the trade. The need to speed up the turnround of ships may justify the use of shift work or overtime, but in any case the working day or working week of dockworkers should not be longer than those of any other workers. [115] In that respect, the Committee recalls that the Conference adopted the Hours of Work (Industry) Convention, 1919 (No. 1), ratified by 52 member States to date, which sets out the principles for industrial workers and applies explicitly to "the handling of cargoes at docks, quays, wharves or warehouses". [116] A great many member States apply this principle, whether or not they have ratified Convention No. 1. [117]

162. The Committee considers that, even if dockworkers still work well in excess of normal hours in the course of the same day or week, the casual nature of their work or economic necessity do not in any way justify unduly prolonged hours of work.

[113] Minimum Wage Fixing Convention, 1970 (No. 131), *Art. 3*.

[114] For example: *Colombia, Croatia, Czech Republic, Italy* and *Pakistan*.

[115] For example: *Barbados*.

[116] Hours of Work (Industry) Convention, 1919 (No. 1), *Art. 1, para. 1(d)*.

[117] The general labour provisions apply to dockworkers in the following countries: *Algeria, Argentina, Barbados, Finland, Jordan, Lebanon, Namibia, Nicaragua, Peru, Singapore* and *Yemen*.

163. It is possible, on the other hand, as in certain countries, such as *Australia* [118] and *Belgium*, [119] to lower dockworkers' hours of work below the level generally applicable in other industrial sectors. There are a number of reasons for this. The first concerns the nature of the work which, despite technical progress, may still be performed in arduous conditions of heat, cold or inclement weather. The second reason has to do with the need to equalize the employment of the labour surplus resulting from the introduction of new cargo-handling methods. Reducing normal working time may help to achieve this. Third, the need to extend port operations, often up to 24 hours a day, demands the use of shift work. To offset the inconvenience of such working arrangements for dockworkers both in their family life and their social activities, there may be grounds for granting them lighter weekly hours of work than employees who work normal hours. In this respect, the Recommendation indicates a number of measures to be adopted, including fixing an appropriate maximum duration of hours of work and the payment of compensation for the inconvenience caused to the worker by shift work *(Paragraph 33)*. Negotiations between employers and trade unions may lead to more flexible working hours. However, in some cases, such situations may impair the rights conferred by full-time work in terms of social security, especially in relation to medical care and termination benefits.

164. While in the past the use of overtime was often necessary, if only because of the irregularity of traffic, the greater precision in the scheduling of ship movements now makes it easier to foresee labour needs and should help to restrict the use of overtime as much as possible. Where appropriate, most collective agreements and port tariffs indicate the "normal" working hours in the port beyond which surcharges are calculated, particularly in view of the overtime paid to workers. When favourable agreements have been concluded for the compensation of overtime, there may be a great temptation, with the assent of the workers, to work longer hours. Excessive use of overtime should be discouraged, since it compromises workers' safety and health and undermines the creation of new jobs. A policy should therefore be introduced to arrange hours of work within predetermined limits, after consultation between the employers and workers.

165. The principle of weekly rest, as set out in the Weekly Rest (Industry) Convention, 1921 (No. 14), which applies to the port industry, is also a factor that needs to be taken into consideration in establishing good working conditions. While, in general, the application of this principle does not seem to give rise to difficulties, derogations are allowed for activities which must be carried out on the normal weekly rest day. This is the case in particular in the transport sector. In the port industry, the need to work on the daily rest day arises

[118] Thirty-five hours.

[119] The working week is set at 36 and 1/4 hours by collective agreement.

in the case of shift work. It is, however, important to grant a compensatory rest day to maintain the health and output of the workforce. The system of providing compensation should be retained in so far as practicable.

166. Finally, dockworkers should benefit from holidays with pay in the same way as all industrial workers. Holidays with pay have become a real social need, and dockworkers should also aspire to them. The length of holidays is often function of age or the number of years of service.

3. Social security benefits

167. The Convention is silent on the question of social security benefits. The Recommendation deals with the subject clearly by envisaging measures to be taken when no work is available *(Paragraph 8(c))* or in the event of an unavoidable reduction of the workforce *(Paragraph 10)*. It also mentions the pension and retirement schemes that should be introduced *(Paragraph 35)*. It is not possible to describe below all the social security schemes applying to dockers. The essential issue is that they should have the same entitlements as other industrial workers, and the great majority of reports examined indicate that they do. The fact that many dockworkers cannot yet work regularly merely makes the provision of benefits by social security schemes even more necessary for them. With respect to the application of such schemes, the Committee has indicated in a previous General Survey that examination of national practice shows that in many countries the Ministry of Labour is responsible wholly or in part for social security, and especially for the preparation and application of the relevant legislation. The Ministry also sometimes assumes direct responsibility for the management of social security funds. Some countries have introduced a social security code, which defines the personal and material scope of the legislation and lays down conditions for eligibility for benefits, and the nature, form and level of the benefits provided for all social contingencies, namely benefits for old age, invalidity, survivors, unemployment, maternity, family, employment injury and occupational diseases. In some countries, tripartite or joint bodies are responsible for management of funds and the provision of social security benefits. In other countries, separate bodies administer the various social insurance funds according to the contingency covered.[120] From its examination of the reports, the Committee finds that the majority of countries do not have a specific social security scheme for dockworkers, particularly for the above benefits. At most, it may be said, and this is no different from other categories of workers, that certain countries provide unemployment benefit, sometimes subject to a waiting period. Finally, unemployment and old-age

[120] See ILO: *Labour administration*, ILC, 85th Session, 1997, Report III (Part 1B), paras. 80-83.

benefits, when they are sufficiently high, may act as incentives for voluntary departure as envisaged in structural adjustment programmes.

168. In previous years, the Committee has indicated in its General Report that the concern with conserving the financial viability and improving the cost/effectiveness ratio of different social security systems has led to a generalization and an acceleration of the reform process. The Committee noted that the scope and depth of the reforms could lead to a fundamental change in social security systems in the world.[121] Nevertheless, reforms of social security systems require a balanced approach, relying on a long-term and clear vision, formulated after consultation with all the main social and political actors in the countries concerned. As such, the specific interests of those covered by social protection should be taken into consideration and their representatives should be involved, as much as possible, in the reform process.[122] The social security system that is applied to dockworkers should respond to the abovementioned demands, whether or not it conforms to systems applicable to other categories of workers.

4. Occupational safety and health measures

169. Although in this survey, the Committee's analysis is focused mainly on modern cargo-handling methods, it has not overlooked that many dockworkers throughout the world still move, lift and carry packages of all shapes and sizes. It also wishes to emphasize that mechanization and the increasingly far-reaching changes occurring in cargo handling mean that, while accidents may be less frequent, when they happen they are comparatively more serious or even fatal. Under the terms of *Article 6* of the Convention and *Paragraph 31* of the Recommendation, appropriate health and safety measures, should be applied to dockworkers. As the Committee has indicated above, the reference instruments are currently the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), and the corresponding Recommendation No. 160. The Committee draws attention to the specific invitation made by the Governing Body to member States to consider ratifying Convention No. 152 and giving effect to Recommendation No. 160.

170. In general, the majority of governments appear to involve the social partners in the preparation and development of labour standards in the area of safety and health in ports. In this respect, the Committee wishes to emphasize the importance of training and prevention. Among other measures, official institutions should be established at the level of ports with responsibility for improving safety and increasing the awareness of the various parties concerned

[121] See ILC, 85th Session, 1997, Report III (Part 4A), paras. 62-67.

[122] See ILC, 83rd Session, 1996, Report III (Part 4A), paras. 58 and 59.

(employers and workers, and their organizations) and of the needs in this respect. [123] Some member States referred to programmes institutions responsible for enforcing compliance with general regulations on safety and health. [124] The Committee notes, however, that some countries do not have specific regulations for the sector, even though, given the special nature of the installations and conditions of work, it regards such regulations as indispensable.

171. An even greater number of ports now form centres of activities in which seafarers, dockworkers and lorry drivers, among others, are engaged in related operations. For a number of years, the mobility of transport workers has been considered to be a probable cause of the greater risk of exposure of workers in ports to HIV/AIDS. This situation has been identified in particular in South Africa and Brazil. The ILO, with the collaboration of the competent authorities, is studying the matter and has advocated a number of measures in the two countries. It envisages analysing the results of these measures in the near future before implementing them in other countries.

172. Finally, an effective inspection service is necessary to ensure the proper implementation of safety and health standards in the port sector. This question is covered briefly in the Recommendation, which provides that there should be adequate and qualified inspection services *(Paragraph 31)*. Labour inspection should have a preventive function. The Committee has indicated that, since the origin of inspection, prevention has been regarded as crucial and retains its full pertinence today. [125] It has also found that, in line with the provisions of the Labour Inspection Convention, 1947 (No. 81), labour inspectors are often empowered to order remedial measures and, where necessary, measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

Section III. Social repercussions of the introduction of new methods of cargo handling

173. While the two instruments recognize in their Preambles that new methods of cargo handling in docks "may benefit the economy of the country concerned as a whole and contribute to the raising of the standard of living", it is important not to lose sight of the interests of dockworkers and to give equal

[123] For example: *Belgium* (the employer has an obligation to set up a joint committee on health and the improvement of the workplace), *Costa Rica* (committee on occupational safety established under the JAPDEVA agreement), *United Kingdom* (Ports Safety Organisation Technical Services Ltd.) and *United States*.

[124] For example: *Bahrain* (under s. 3 of the Occupational Safety Act of 15 November 1984) and *Brazil* (through the integrated programme of port modernization – PIMOP).

[125] See ILO: *Labour inspection*, ILC, 71st Session, Geneva, 1985, Report III (Part 4B).

weight to the economic, financial and technical aspects as to the social consequences of such change. To cope with a new situation, it is necessary to anticipate its probable effects so as to be able to take all the necessary measures to prevent or attenuate the prejudicial consequences on dockworkers.

A. Forecasting the effects of change

174. Although the Convention deals only briefly with the question in its Preamble, the Recommendation prescribes at length, in its second part, the need to examine the probable effects of changes in cargo-handling methods, and particularly on employment opportunities and conditions of work of dockworkers, with a view to improving the adaptation of employment policies and programmes in the sector to the new technical requirements and labour management methods. For this purpose, all relevant information, such as statistics of freight movement through ports, the origin and the destination of the main streams of freight handled, estimates of future trends and forecasts of labour requirements in ports should be collected continuously. [126] The reasons for such planning are clear and driven by the need to introduce and apply the new cargo-handling methods with the minimum of friction. The ideal method would be to prepare well in advance for the adoption of the new methods and to identify clearly their impact so as to avoid any risk of particularly adverse consequences for the employment security of dockworkers or their conditions of work.

175. In this respect, the Tripartite Technical Meeting on Dock Labour, 1969, expressed the view that "consideration should be given to manpower planning in the dock industry as far in advance as possible. Such planning should be based upon accurate information, which would enable the organisations concerned to forecast future trends in the development of world trade and in cargo-handling methods. Forward planning was essential if social hardship was to be avoided [...]".

176. It is evident that deciding upon the best cargo-handling method for a specific country, region or port is no longer just a political decision by the public authorities. Other factors, foremost among them the increasingly integrated international maritime relations and the ever-growing demand for ports offering industrial and service functions, exert a real influence on the development strategies adopted. [127]

177. The Recommendation envisages certain key items of information to facilitate planning and coordination. The development of inland transport

[126] *Part II* (Impact of changes in cargo-handling methods) of Recommendation No. 145.

[127] See in this regard: Ch. I, s. II. Port reforms (paras. 33-63).

infrastructure may also be a factor to be taken into consideration. Indeed, in a setting in which ports will increasingly be asked to become linked and integrated logistical platforms, road, rail and river transport will need to be able to align themselves with maritime transport. The Committee has already indicated above that port operations now require the substitution of labour by capital investment. The availability of capital and its impact on the ability to maintain or create jobs therefore needs to be taken into account. Finally, from the shipowners' point of view in particular, a port's output may be considered in terms of the overall figures for turnround time and total traffic.

178. The intense competition which now prevails in the world's port industry, the commercial stakes, as well as the development of new communication technologies, are greatly facilitating the provision of and access to information. In preparing this survey, in addition to the information provided in governments' reports and ILO documents, the Committee had the benefit of extremely interesting information of all kinds, in particular though the Internet, where it is possible to find the web sites of almost all the world's cargo-handling groups, a very large number of national ports, the national or international representative organizations concerned, sectoral research institutes, the technical press and, of course, intergovernmental organizations active in the port sector. [128] An analysis of the information collected clearly needs to take into account, with complete impartiality, the nature of the entity providing it.

B. Management of workforce variations in the context of structural adjustment

179. According to *Article 4, paragraph 2*, of the Convention, "[a]ny necessary reduction in the strength of a register shall be accompanied by measures designed to prevent or minimise detrimental effects on dockworkers".

180. The report submitted for discussion to the 1996 Tripartite Meeting indicated that the first half of the 1990s was characterized by a considerable reduction in dock labour. [129] In *Australia*, for example, the changes introduced in 1989 by the authority responsible for port reform resulted in a 57 per cent reduction in the number of dockworkers over the first three years of reform. [130] During the discussions, the representatives of *Ghana* and *Kenya* indicated that structural adjustments had led to significant job losses in the port sector. In the *United Kingdom*, the abolition in 1989 of the docks employment scheme led to a

[128] On this point, the Committee refers to the list of web sites, which is not exhaustive, provided at the end of Ch. 1.

[129] ILO: Tripartite Meeting on Social and Labour Problems caused by Structural Adjustments in the Port Industry, ILO, Geneva, 20-24 May 1996, TMPI/1996.

[130] Statement by the representative of *Australia* during the discussions.

44 per cent fall in employment over the following three years in ports previously covered by the scheme. Furthermore, according to the 1995 report of the International Transport Workers' Federation, 73 per cent of trade unions which replied to the Federation's questionnaire reported an average reduction in employment of 22 per cent over the period concerned. The Committee also noted certain other information on dramatic reductions in the workforce: in *Argentina*, privatization of ports led to job reductions of 70 per cent between 1989 and 1993, while productivity leapt by 300 per cent. [131] The port of *Buenos Aires* saw its workforce reduced from 7,183 workers in 1991 to 1,830 in 1994 (a 75 per cent reduction). [132] In *New Zealand*, from 50 cargo-handling enterprises employing around 3,500 workers in 1988, the figure fell to 11 enterprises employing fewer than 1,000 workers ten years later (a 71 per cent reduction).

181. The reduction in employment calls for a combination of measures, including the financing of voluntary early retirement, freezing recruitment, retraining and the transfer of dockworkers. Recommendation No. 145 proposes all these measures in determining the scale of reduction, but also envisages taking account of "natural wastage" and the "exclusion of men who do not derive their main means of livelihood from dock work" *(Paragraph 19(2))*. Ultimately, the strategy for reducing the workforce during a period of the liberalization, privatization and globalization of the port industry depends on a large number of objective and subjective factors including:

- the pace and scale of the reductions sought by cargo-handling enterprises;
- the strength of the trade unions and the industrial relations situation;
- the involvement of the private or public sector in the operations under consideration;
- the degree of exposure to competition;
- the port's financial position;
- the transferability of dockworkers to other sites;
- the level of funding made available by public authorities for the social support of reductions in the workforce;
- training, the capacity for change and the professional or geographical mobility of dockworkers, and their interest in voluntary early retirement schemes.

The two most common measures are examined below.

[131] Jan Hoffmann: "Las Privatizaciones Portuarias en América Latina en los 90: Determinantes y Resultados" ("Tercer Programma Internacional y privatización y Regulación de Servicios de Transporté", Las Palmas de Gran Canaria, 5-10 April 1999), Economic Commission for Latin America and the Caribbean, United Nations, Santiago de Chile, 1999.

[132] "Le système portuaire latino-américain aujourd'hui", *Villes & Ports*, No 20, Dec. 1997.

Encouraging voluntary departures

182. Reductions in employment levels in the port industry can be achieved without resorting to mass terminations. Early retirement and leaving plans calling for volunteers may be adopted, along with other measures, such as functional and regional redeployment, the non-replacement of leavers, the reduction in hours of work and new methods of organizing work.

183. A strategy frequently used to reduce the workforce consists of promoting early retirement. In *Spain*, the Government has adopted regulations to facilitate early retirement, provided that the length of service is sufficient to give entitlement to social security benefits. This measure has subsequently been incorporated in a tripartite sectoral agreement.[133] There are various compensation schemes in this connection. In *Pakistan*, a system to encourage early retirement was introduced in the port of Karachi in 1993, consisting of the payment of a sum of money for any voluntary departure and a supplement for giving up the right to pass on employment to eldest sons.

184. The financing of measures of this type to reduce the workforce may sometimes be very costly, and many governments have experienced or will certainly experience difficulties in applying them smoothly.

Termination of employment

185. The Committee recalls that termination of employment should only be used, according to the provisions of the Recommendation, as a last resort and only after due regard has been had to less detrimental measures *(Paragraph 19(3))*. Furthermore, when termination of employment is unavoidable, it should be carried out according to agreed criteria, set out in *Paragraph 10*, with a view to providing financial protection to the dockworker concerned.

186. Most countries have managed to reduce the workforce in the context of structural adjustment programmes by combining schemes for diminishing the workforce with early retirement measures. The replies to the 1996 ILO questionnaire did not give precise details on terminations of employment, but generally indicated that they were unavoidable in the context of reform. From its examination of reports, the Committee regrets that only very brief information was provided on this question. Some countries simply indicated that periodic recourse to the termination of dockworkers' employment was subject to control by the competent bodies responsible for ensuring the fairness of the procedure.[134]

[133] *Spain:* Royal Legislative Decree 2/1986 of 23 May 1986. The relevant provisions are incorporated in the resolution of 19 November 1999 issuing Agreement III on the regularization of industrial relations in the port sector.

[134] For example: *Bangladesh*, *El Salvador*, *India* and *Panama*.

187. In general, under the Termination of Employment Convention, 1982 (No. 158), a worker whose employment has been terminated is entitled, in accordance with national law and practice, to either a severance allowance or other separation benefits, the amount of which must be based, inter alia, on length of service and the level of wages, and which are to be paid directly by the employer or by a fund constituted by employers' contributions *(Article 12, paragraph 1(a))* or benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject *(paragraph 1(b))*, or a combination of such allowances and benefits *(paragraph 1(c))*. The compensation is a form of income protection. Moreover, some countries may provide for priority in the re-employment of dockworkers whose employment has been terminated. In *Estonia*, for example, the Employment Contracts Act (section 98(3)) provides that an employer who has vacant positions is required to re-employ an employee whose employment has been terminated in the previous six months, if the employee so wishes.

188. In general terms, measures accompanying voluntary departure and dismissal may be financed by port authorities, private employers or special public funds. In *Australia*, a body with separate legal personality has been created to help port enterprises finance restructuring measures.[135] Between August 1998 and December 1999, a total of 1,487 voluntary departures were financed in this way to a total of $178 million Australian dollars.

Section IV. Industrial relations

189. The Convention envisages the full participation by employers' and workers' organizations in its implementation.[136] Taking up the provisions of the Convention, the Recommendation further envisages, in two parts, the possible forms of participation by the social partners. The first part emphasizes the importance of ensuring the existence of representative organizations and the need to encourage discussions and negotiations between employers and workers for the settlement of disputes, with clear references to the relevant ILO Conventions and Recommendations.[137] The second part calls for the signature of agreements between employers, or their organizations, and workers'

[135] *Australia:* Maritime Industry Finance Company Ltd. (MIFCo).

[136] *Arts. 1, 3, 5* and *7* of Convention No. 137.

[137] *Part IV* (Labour-management relations) of Recommendation No. 145 refers to the following ILO instruments: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Communications within the Undertaking Recommendation, 1967 (No. 129); and Examination of Grievances Recommendation, 1967 (No. 130).

organizations on measures to regularize employment and stabilize earnings, as well as to improve the efficiency of dock work. [138]

190. Consultations between the public authorities and representative employers' and workers' organizations are a fundamental principle defended by the ILO. To ensure the maximum success of consultations, certain elementary conditions must be present, such as a stable political climate, respect for the rights of freedom of association and the proper conduct of collective bargaining, a genuine will to reach a consensus and communication to the social partners of sufficient information. All these basic principles apply equally to the port sector.

191. Trade unionism in ports has encountered and still encounters organizational difficulties due to the nature of the work of dockworkers., which is casual and dispersed in its location and content. Moreover, attention should be drawn to the fact that industrial relations machinery depends on very diverse factors, such as the structure of the port industry in each country, its weight in national economic development, the scale of regular employment, the multiplicity of trade unions, the attitudes of the public authorities and employers, etc.

192. The specific features of dock work such as its intermittent or casual nature, the arduousness of the work, the multiplicity of employers, the modernization of methods and the rationalization of labour management, etc., have a certain impact on the concept of industrial relations in the sector. The question that arises, however, is does this require special treatment distinct from the rules and practices normally applicable to workers in general? In some cases, dockworkers are regarded as public employees and as such are subject to the conditions of service of the public service. In other cases, special legislation may govern the industrial relations of dockworkers. In most cases, the question of industrial relations in the port industry is determined by labour legislation and rules and practice applicable to workers in general. As in other industrial sectors, collective agreements may be an effective means of satisfying the particular needs of dock work.

193. Dockworkers' trade unions have traditionally been a very active group, being highly aware of solidarity and their impact at the global level. The importance of the port industry to economic development in most countries has often led to dockworkers' unions taking the lead in national trade union movements, or even being among the first organized groups of workers in some countries. [139] Their functions are very varied and may comprise, at many levels, collective bargaining and handling claims and industrial disputes, as well as

[138] In addition, *Part V* (Organisation of work in ports) of Recommendation No. 145 provides examples of subjects which might be covered by such measures *(Para. 29)*.

[139] For example: *United Republic of Tanzania* in the 1930s; *Libyan Arab Jamahiriya* in the 1940s.

participation in joint consultative bodies. If industrial relations operate at the enterprise level, the counterpart is generally the employer, whether public or private. At the regional or national levels, employers' interests may also be defended by representative organizations. In an evolving sector in which the main trend is the strengthening of private sector involvement, governments and employers' and workers' representative organizations meeting in Geneva in 1996 sought to emphasize the essential nature of dialogue between the social partners, within a legislative framework defined by the public authorities, to anticipate and manage such change. [140]

194. In this context, the Committee considers it apposite to quote the view of the International Transport Workers' Federation in its 1995 report: "The vast majority of port workers in the world have experienced some form of restructuring which has negatively impacted on employment and subsequently on the living conditions of port workers and of those who depend on them. [...] An important factor is that trade union organization and the participation of workers in the decision-making process mitigates the negative effects of restructuring for workers. Such participation in decision-making is vital and effective where workers' representatives not only take part in the process, but also accept responsibility for the results of port reform. [...] Any reform, restructuring or reorganization, whether sparked off by structural adjustment programmes introduced by governments with the support of the IMF and the World Bank, by developments in trade and transport patterns, or born of the introduction of new technology, needs to be judged on its short- and long-term effects for the workers involved. There is no one standard policy or magic formula that can be used to deal with restructuring in all ports worldwide; the only criterion that can be used by trade unions negotiating reform is the effect of the proposed changes on the workers' interests".

195. In a sector that has been changing rapidly for over a decade, the representative organizations have learned to establish the principle of consultation and collective bargaining. In this respect, the Committee particularly regrets the low number of workers' and employers' organizations that took the opportunity offered by this survey to express their views on the application in practice of national laws and regulations. [141]

[140] See on this subject: *Conclusions on social and labour problems caused by structural adjustments in the port industry*, adopted unanimously at the Tripartite Meeting of 20-24 May 1996, doc. TMPI/1996/10.

[141] The list of representative organizations that provided comments can be found in footnote 22 of the Introduction.

A. Collective bargaining

196. In the first place, it is essential that both workers and employers "shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation". [142] This principle is firmly established in a fundamental international labour standard that is widely recognized in the vast majority of countries and is generally applied without difficulty to the port sector. It is then necessary to define the meaning to be given to industrial relations in the context of this survey.

197. Industrial relations can be taken to mean all of the institutions and mechanisms through which employers and workers, or their organizations, establish and apply rules governing labour relations, including matters such as conditions of work and employment. These mechanisms allow great flexibility in the development of rules suited to the particular situation of the industry or enterprise concerned. This adaptability, and the possibility for those concerned to "have their say", should encourage all parties to engage in industrial relations.

198. Relations between employers and dockworkers are very much subject to the influence of the specific circumstances of dock work. The casual nature of the work may in the past, or even still today, have led to a degree of indifference with regard to the establishment of appropriate consultation machinery or compliance with the agreements concluded. However, the increasingly frequent adoption of active measures and policies to regularize the employment and stabilize the earnings of dockworkers should have the effect of encouraging the establishment of relations similar to those normally found in any other branch of economic activity, or even within a single industrial enterprise. Furthermore, nothing should prevent such relations being established between permanently employed dockworkers and their employers.

199. The specific industrial relations machinery, and the level at which the various procedures occur, are obviously a function of the various factors mentioned above. For example, negotiations may be conducted either at the national level, [143] or the regional level. [144] In *Italy*, the collective agreement on dock work signed on 11 June 2001 provides for the establishment of a

[142] Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), *Art. 2*.

[143] For example: *Argentina, Barbados, Brazil* and *New Zealand*.

[144] For example: in *Costa Rica*, dockworkers' conditions of employment and work are fixed by collective agreements concluded with the Costa Rican Institute for the Pacific Ports (INCOOP) and the Committee for Port Administration and Economic Development of the Atlantic Coast (JAPDEVA). The same applies in the *United States*, where conditions of employment for East coast dockworkers are governed by a Multi-port Master Contract negotiated by the AFL-CIO, while West coast ports are covered by collective agreements concluded by the ILWU.

permanent national joint committee with responsibility for all economic and social issues in the sector. [145] A large number of reports mention institutions or collective agreements at the port level. [146] The participation of the social partners may occur at the industry or port community level, or the enterprise level. [147] In *Belgium*, although the social dialogue initiative is a matter for federal policy and responsibility for implementing employment policy lies with the regional governments, the Government indicates that practically all aspects of port activities are controlled by the social partners through joint bodies. [148] In *Japan*, matters relating to the application of the Port Labour Law are generally discussed with the social partners in the Labour Policy Council and, at port level, in the Regional Employment Security Deliberative Council. The Government of *Tunisia* indicated that the adoption of the Maritime Commercial Ports Code, Act No. 99-25 of 18 March 1998, was the result of an active policy of dialogue between the social partners in the port industry. Each port has a tripartite employment agency which controls the manner in which the recruitment of dockworkers is organized and recommends ways of improving their conditions of work. Finally, it is also common for negotiations to be conducted at the enterprise level. [149] In *Australia*, for example, a general law establishes the framework for industrial relations at the level of port enterprises, as in other industrial enterprises. [150]

200. It is even more essential to develop discussions and negotiations between all those involved when the sector is to be affected by a structural adjustment or modernization programme. For such a programme to succeed, it is essential to involve both employers and workers in the measures taken to regularize employment, or at least to consult those affected before any measures are introduced that might harm their interests. Dialogue and negotiation in good faith are still the most effective way of preventing conflict, in so far as possible.

B. Industrial disputes and their settlement

201. Disputes have been very frequent in ports. The Committee has described above the factors preventing straightforward relations between employers and workers, the conditions in which they often have to work and, of

[145] *Italy:* s. 40 of the collective agreement of 11 June 2001.

[146] For example: *Austria, Cuba, El Salvador, Gambia, Malta, Pakistan, Romania* and *United States*.

[147] For example: *Canada*.

[148] Such as port administration committees, social fund management committees and employment services.

[149] For example: *Algeria, Benin, Singapore* and *Spain*.

[150] *Australia:* Federal Workplace Relations Act, 1996, as amended in March 1997.

course, the friction between new cargo-handling methods and established working methods. Very often, work stoppages are a result of incipient conflicts. In accordance with the ILO's principles for workers and their organizations, the right to strike is an essential means of defending their interests, even if certain conditions relating to the procedures and certain restrictions are accepted, provided that appropriate compensatory measures are guaranteed, including compulsory arbitration. The possible consequences of such work stoppages are well known: ships are delayed, inland transport held up, perishable goods damaged and rendered unusable, or exports hindered. If the work stoppage is prolonged, the impact on the national economy itself may be serious.

202. It is therefore of the utmost importance that machinery that is well adapted to the circumstances should exist for the rapid settlement of conflicts and disputes. In particular, the necessary measures should be taken to prevent disputes from spreading and, where possible, to allow work to continue pending their settlement. It is not possible here to list and examine all the possible types of machinery for settling disputes and conflicts. The often complex procedures adopted in most countries vary according to the specific characteristics of each country.

203. Some States leave dispute settlement to collective bargaining.[151] Conciliation procedures are sometimes available to the parties concerned. In some cases, arbitration is provided for where conciliation fails.[152] In *Brazil*, in the event of a dispute, mediation can be provided by the regional offices of the Ministry of Labour and Employment. The function of mediation is also entrusted to special units of the labour inspectorate for ports and waterways, and to its regional sections, under the terms of intersectoral standardized instruction SEFIT/SSST/MTE No. 13, of 6 July 1999. In *Mauritius*, disputes are dealt with initially at the port level, with few of them going as far as the Ministry of Labour and Industrial Relations. In the last resort, the dispute is referred, under the Labour Relations Act of 1973, for arbitration to the Committee on Labour Relations or a permanent arbitration tribunal. Many countries have conciliation and mediation services for collective labour disputes which also cover the port sector.[153] In the *Philippines*, any collective bargaining agreement must contain provisions relating to the settlement of disputes concerning the interpretation and

[151] For example: *Norway* and *United States*.

[152] For example: *Bahrain*, *Namibia* and *New Zealand*.

[153] For example: *Canada*: the Labour Code provides for the settlement of industrial disputes by the Federal Mediation and Conciliation Service or the Industrial Relations Board; *Ghana*: in accordance with the Industrial Relations Act of 1965 (No. 299); *Indonesia*: Central and Regional Committee of Labour Disputes Settlement; *Tunisia*: industrial tribunals have jurisdiction in individual disputes concerning compliance with the contract of employment (s. 183 of the Labour Code), but conditions of work in ports are under the control of the Directorate General of the Merchant Navy.

application of the agreement. Any dispute not resolved within a given period is automatically referred to arbitration. Arbitration officers must be accredited by the National Conciliation and Mediation Board. Arbitration decisions are final and binding within ten days of their publication. Furthermore, individual labour disputes are subject to compulsory arbitration exclusively by the National Labour Relations Board. Some governments have assigned the functions of investigation, mediation and reaching a decision to bodies set up in ports. [154] These functions may be performed as intermediary dispute settlement procedures between conciliation and judicial procedures. [155] In *Panama*, the regulations provide for a conciliation procedure between workers and the Empresa Panama Port Company S.A. for the ports of *Balboa* and *Cristóbal*, based on the machinery for the settlement of collective labour disputes with the National Port Authority. Individual disputes are a matter for the courts of first instance in the place where the dispute occurs.

204. Trade union disputes remain a topical issue in ports around the world which are affected by structural adjustment programmes, privatization measures and the desire of operators to reduce costs while increasing labour flexibility. The International Transport Workers' Federation recently reported some of the continuing disputes which are extensively mobilizing the Federation and its affiliates. [156]

205. When examining the application of the Convention by a State which has ratified it, the Committee had before it the observations made by many representative organizations denouncing the casualization of the employment of registered casual workers and the refusal of private operators to negotiate collective agreements, despite the guarantees provided in the national legislation. The government reported its activities to facilitate the adoption of measures to encourage and promote voluntary bargaining through collective agreements, including the establishment of a group for the roving supervision of dock labour entrusted with guaranteeing the rights of workers, and the legal and administrative recourse available to them. Whilst recognizing that the modernization of national ports could be a difficult and delicate process, the Committee reaffirms the necessity to establish dialogue between all the parties concerned.

[154] For example: *Costa Rica:* the collective agreement concluded with the Committee for Port Administration and Economic Development of the Atlantic Coast (JAPDEVA) provides for the creation of a labour relations committee (Ch. XI); *Malta:* the Port Workers Ordinance provides for the formation of a port disputes board (ss. 10-11).

[155] Certain countries provide for the direct settlement of individual labour disputes through the courts: *Panama, Thailand* (ss. 21-23 of the Labour Relations Act No. 2518) and *United Kingdom* (which also has conciliation and arbitration machinery).

[156] See "Under attack", in *International Transport Review*, International Transport Workers' Federation, Sep. 2001.

CHAPTER III

DIFFICULTIES IN THE APPLICATION OF THE INSTRUMENTS AND PROSPECTS FOR RATIFICATION

206. Convention No. 137 has only been ratified by 22 member States. Although this rate of ratification is fairly low in absolute terms, it corresponds to the number of ratifications of the other ILO Convention concerning this particular category of workers, the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152). [1]

207. General Surveys are real works of reference to evaluate the situation of national law and practice in a specific area, and to understand the difficulties of applying and ratifying ILO instruments. [2] In preparing the present survey, the Committee has sought to devote special attention to this latter aspect for, as already indicated, a wide divergence of opinions had been expressed on the relevance of Convention No. 137 at the 1996 Tripartite Meeting on the Social and Labour Problems caused by Structural Adjustments in the Port Industry. The Committee regrets that in the case of the present survey only a limited number of governments have provided information on difficulties of application, the reasons that they consider to be such as to prevent ratification or on their intentions with regard to ratification.

Section I. Difficulties in implementing the provisions of the Convention and the Recommendation

208. Several governments described in their reports the reasons which they consider prevent the ratification of the Convention. Others mentioned specific difficulties concerning particular aspects of the Convention. The Committee also notes the observations made in this respect by the representative organizations concerned.

[1] As of 7 December 2001, 20 member States have ratified this Convention.

[2] See, on this issue, doc. GB.262/LILS/3, paras. 44 et seq.

1. Guarantees of employment or income

209. The Government of *Austria* indicated that the main difficulty in applying the Convention was the duality of status between permanent and casual dockworkers, with the latter not benefiting from the same rights as the former in terms of the stabilization of employment and income. The legal and economic uncertainty experienced by casual workers is not such as to be able to comply with the Convention and the Recommendation.

210. For the Government of *Singapore*, compliance with the provisions of the Convention implies intervention by the public authorities, particularly through the adoption of appropriate regulations. However, it adds that interventionism is not necessarily the best method. Account needs to be taken of the different political, economic and social conditions in each country. In the Government's view, the provision of an attendance allowance, unemployment benefits and other allowances when no work is available, should only be secured when there are no employment possibilities. Instead, workers should be encouraged to seek job opportunities elsewhere.

211. In the view of the *Barbados* Employers' Confederation (BEC), not only do the Convention and the Recommendation not contain any provisions on the handling of containers, which are the modern means of transporting goods, but the arrangements envisaged in *Articles 2 and 3* of the Convention are very outdated in relation to current practice in most countries.

2. Registration of dockworkers

212. The Government of the *United States* has difficulty with the fact that no legislative provision in the United States provides for the establishment of registers of dockworkers, as prescribed by *Article 3* of Convention No. 137 and *Paragraph 11* of Recommendation No. 145. It indicates that registration methods are provided for in collective agreements. On this point, the Committee wishes to recall that the provisions in both the Convention and the Recommendation make reference to national practice as a way of determining methods for the registration of dockworkers, and that legislation is not required.

3. Adjustment of the workforce

213. The Government of *Burundi* indicates that the change in cargo-handling methods, and the consequent introduction of new equipment, will inevitably result in a reduction in the number of daily workers.

214. For the Government of *Spain*, the excess dock workforce is essentially due to a lack of flexibility in defining the status of dockworkers,

which has not taken into account the introduction of new cargo-handling methods and the decline in shipping traffic.

215. In the view of the Korean Employers Federation (KEF), the Labour Standards Act applies to dockworkers. Paying attendance money and benefits for reductions in the workforce specifically to dockworkers would therefore be considered discriminatory in relation to all the other categories of workers.

216. The Confederation of Portuguese Industry (CIP) is of the opinion that the Convention and the Recommendation refer to an employment and labour situation that has changed since the texts were adopted in 1973 and that it is necessary to revise the national legislation to take into account the economic imperatives that currently prevail in the port sector, and for the same reason, the ILO's instruments should also be revised. The General Union of Workers (UGT) regrets that Portuguese legislation relating to ports, which has been revised in recent years, allows less room for the consultation and participation of trade unions in the management and administration of ports. According to the UGT, less attention is also being paid to social matters and to the impact on workers of the structural adjustments carried out in the sector. The conditions for the registration of workers who are available for dock work are too lax. This situation has resulted in more difficult working conditions, which an ineffective labour inspectorate is not capable of remedying. The UGT deplored that no effect is given to the protective provisions contained in the Convention, which the Government has ratified, and the Recommendation.

4. Methods of implementation

217. The Government of *Canada* considers that the conditions of work of dockworkers, which are mostly determined by collective agreements, broadly comply with the requirements of the Convention. As effect is not given to all the provisions of the Convention by national laws or regulations, ratification cannot be envisaged. The Committee draws attention to the wording of *Article 7* of the Convention, to the effect that "the provisions of this Convention shall, except in so far as they are otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations". It is clear from the work of the Dock Work Committee of the Conference that the purpose of this wording is to indicate clearly that the application of the Convention can be achieved by any means; however, in the last resort, it is the responsibility of the government to ensure that its application is secured. [3]

[3] Report of the Dock Work Committee: *Record of Proceedings*, ILC, 58th Session, Geneva, 1973, paras. 42-47.

5. Privatization

218. The Government of *Italy* mentioned difficulties inherent in the process of privatization and liberalization of the labour market in the sector (cessation of activity of certain operators and adjustment of the workforce). The Government is very active in its role of mediation between the social partners in this period of transition.

Section II. Prospects for ratification

219. Almost all the ratifications of the Convention were registered between 1974 and 1983. The last ratification was in 1994. [4] Bearing in mind the replies of member States, the Committee considers that the prospects for ratification of the Convention are poor.

220. Indeed, only the Governments of *Gambia* and *Mauritius* indicated that the question of the ratification of the Convention will be submitted to the competent authorities in the near future. The Government of *Belgium* indicates that the question of the ratification of the Convention will be submitted to the Joint Ports Committee No. 301. The Government of *El Salvador* envisages undertaking an in-depth study of the Convention before presenting the question of its ratification to the social partners. The Government of *Greece* indicated that the question of the ratification of the Convention has been discussed by the Supreme Labour Council, where some reservations were expressed by the representative of the Ministry of the Merchant Marine. The Government of *Tunisia* will examine the question of the ratification of the Convention in the light of the new legislation on dock work.

221. A certain number of governments state that their national law and practice are fully in conformity with the provisions of the Convention, without mentioning the possibility of ratification. [5] The position expressed by the Government of *Panama* is that the ratification of the Convention should flow from a consensus between the private sector, the public sector and concessionary enterprises. The Government of *Japan* states that the social partners need to agree on the categories of workers and the ports which could be concerned by the Convention before envisaging its ratification. The Government of *Madagascar* stated that its geographical position warrants greater interest in the instruments on maritime and dock work and that ILO technical assistance would make it possible to bring national laws and regulations into conformity with the relevant instruments before envisaging their ratification.

[4] *Brazil* ratified the Convention on 12 August 1994.

[5] For example: *Algeria, Bahrain, Chile, Oman* and *Qatar*.

222. For many governments, ratification is neither contemplated nor on the agenda. [6] The Government of *Canada* notes the position of the employers' organizations (Canadian Employers' Council, British Columbia Maritime Employers' Association), who are not in favour of ratification of the Convention on the grounds that national laws guarantee a level of protection that is equal if not higher than that prescribed in the Convention. On the other hand, the workers' organizations are in favour of ratification. In the light of these polarized positions, the Government is not contemplating ratification of the Convention. Conditions of employment may vary widely in *Denmark's* ports and are left to the will of the parties. Moreover, each port has concluded a collective agreement, and therefore has its own rules. Ratification of the Convention cannot be envisaged because some of its provisions do not reflect the realities of the labour market. The Government of *New Zealand* considers that the Convention could only be applied in the context of the labour market that prevailed in the 1980s. Dockworkers' employment relations are no longer regulated at industry level, but are now centred on the enterprise. Dock work is now governed by the regulations applicable to all other workers. In such conditions, it is not possible for the Government to give effect to the provisions of the Convention. The Government of *Thailand* considers that the principles defended by the Convention should be supported. However the application of its principles could give rise to certain difficulties, particularly in cases where there are several competent authorities, in which case it would be necessary to define the responsibilities of each by law.

223. Finally, the great majority of countries, sometimes without mentioning any particular difficulties that would prevent the full application of the provisions of the Convention, did not mention the possibility of ratification. [7]

224. A number of representative organizations of workers made observations concerning the ratification of the Convention. The Japanese Trade Union Confederation (JTUC-RENGO) indicated that the Japanese Government should ratify Convention No. 137 as soon as possible so as to improve the conditions of work of Japanese dockworkers. The modernization of the port sector requires guarantees concerning the stability of employment and adequate training. The Confederation also recalls the principle set out in the Convention and the Recommendation that dockworkers should share in the benefits secured by the process of modernization. However, the Government is not taking any steps in this respect. While, in the opinion of the Confederation of Turkish Trade

[6] For example: *Austria, Colombia, Ecuador, Estonia, Germany, India, Republic of Korea, Lebanon, Malta, Namibia, San Marino, Seychelles, Singapore* and *Yemen*.

[7] For example: *Argentina, Barbados, Benin, Bulgaria, Burundi, Croatia, Czech Republic, Egypt, Indonesia, Jordan, Morocco, Myanmar, Nicaragua, Pakistan, Philippines, Russian Federation, Saudi Arabia* and *United States*.

Unions (TÜRK-IŞ), the ratification of the Convention would not be in conflict with the regulations in force and would even be beneficial, the Turkish Confederation of Employers' Associations (TISK) considers that it would constitute an obstacle to the process of change which is currently taking place in the national port industry and which is based on the principles of flexibility and productivity. Finally, according to the Czech-Moravian Confederation of Trade Unions (CM KOS), the low number of dockworkers in ports in the country, estimated at 300, does not justify ratification of the Convention.

FINAL REMARKS

225. The Committee welcomes the choice by the Governing Body of the Dock Work Convention, 1973 (No. 137), and Recommendation (No. 145) as the subject of a General Survey. This has provided an opportunity for the first time to address in detail issues relating to the conditions of employment and work of this specific category of workers in a sector which has been exposed to radical change for several decades. Such changes have made it all the more necessary to examine the important modifications which have occurred in the conditions in which they carry out their work since the adoption of the instruments in 1973. As referred to earlier, Convention No. 137 has received only a low number of ratifications.[1] The present survey was requested, upon the recommendation of the Working Group on Policy regarding the Revision of Standards, prior to examining the possible need to revise the two instruments. This recommendation was made in light of the lively debates in a tripartite sectoral meeting held in 1996 and the conclusions that it adopted on the relevance of these standards in the global context of the current changes in the field of labour and the social and labour problems caused by structural adjustments in the port industry.

226. When it adopted the instruments in 1973, the Conference intended to promote the principle that dockworkers should benefit from the introduction of new cargo-handling methods which could provide lasting improvements in their situation through the regularization of work and the stabilization of incomes and other measures related to their conditions of work and safety and health in ports. However, the Conference was also aware of the prejudicial effects which could arise from the introduction of these new methods, particularly on employment levels, and advocated measures to avoid or attenuate the resulting difficulties. The instruments therefore have two main objectives: in the first place, to afford protection to dockworkers in their professional life through measures relating to the conditions of their access to and performance of work; and second, to foresee and manage in the best possible manner, through appropriate measures, variations in the work and the workforce required for it.

227. The Committee discussed in some detail above the economic and technical context in which the instruments on dock work, and later the instruments on safety and health in dock work, were adopted in 1973 and 1979,

[1] See para. 21.

respectively. Since that time, dock work has continued to undergo change, with the pace of change accelerating once again since the beginning of the 1990s.

228. New methods of cargo handling, particularly unitization systems, and principally the technique of containerization, gradually came into more widespread use in the 1960s and has led to the acceleration of port operations, a reduction in cargo-handling costs and a shorter time in port. Shipowners rapidly appreciated the advantages of these techniques and have equipped their fleets with container vessels to take advantage of the available economies of scale. In this way, the maritime transport industry in turn made it necessary for the world's ports to develop the costly infrastructure required for the handling of containers. At the same time, increasingly substantial financial demands have led port authorities to seek private financing and to develop industrial and commercial activities in addition to their traditional functions. The process of public disengagement which has been emerging for the past 20 years, in the form of deregulation, privatization or the two together has strengthened the involvement and influence of the private sector in the port industry. One of the merits of the 1973 instruments is that they anticipated these changes to a certain extent and set out at an early stage the principles of the protection of dockworkers in the circumstances of substantial transformations to their job prospects and the characteristics of their work. While the description above is apt for the great majority of the world's ports it is not true for all, but even in the lesser affected ports the trend of modernization is likely to be extended further and will therefore affect increasing numbers of dockworkers.

229. Since the beginning of the 1990s, the development of multi-model transport, the intensification of competition between regional ports and the emergence and consolidation of global maritime and port networks have all contributed to accelerating the phenomenon of modernization. The new pressures placed on ports have necessitated the adoption of policies and strategies that are bound to have a social impact. Practically all countries which have reformed their ports or will do so either have or will be faced by the problems of structural adjustment, difficulties related to greater casualization in the employment of dockworkers and the imperatives of competition between ports, all within the context of a globalized economy which is calling into question the organization of work and is giving rise to new challenges for the pertinent ILO standards.

230. Following its examination of the law and practice in member States, the Committee has identified many points of convergence between national regulations respecting dock work and the ILO's instruments. Indeed, the Committee welcomes the fact that this examination has revealed that the fundamental principles which are contained in the instruments are implemented in practice, even where the Convention has not been ratified. Also, the global nature of dock work has had the effect of extending around the world the protection contained in the instruments. In this respect it may be concluded that

the instruments have at least served a function of guidance even to the States that have not ratified them.

231. This information demonstrates the acceptance by most governments of the objectives of the Convention and their adoption of policies which are in conformity with it in such fields as the regularization of employment, the stabilization of incomes, vocational training and cooperation between the social partners.

232. At the same time, the Committee regrets that it has not been able to examine more fully the effect in practice of two important measures set out in the instruments, namely the establishment of registers and the adaptation of the workforce to the needs of ports. On the whole, the information received on these measures was insufficient. The Committee regards this as unfortunate, since the issue of the registration of dockworkers has not received universal acceptance, unlike other principles set out in the instruments. Also, governments usually refer in their reports to the question of the adaptation of the workforce only in order to emphasize the lack of resources available to provide appropriate financing for redundancies, retraining and redeployment. In fact, the available information clearly shows that, up to the present, port reforms have always resulted in a reduction of the numbers of dockworkers, although the manner and size of reductions have varied. The information also indicates that in many cases the surplus registered labour and the radical redundancy measures implemented are the result of not responding to the real needs of ports and a consequent lack of adequate planning and consultations.

233. The Committee's previous discussion reveals that there are many States which do not have any form of registers. In some instances this situation may be the result of a lack of awareness of the flexibility contained in the Convention as to the type of registers which may be maintained. In other instances this situation may be due to a failure to appreciate the benefits of registers, while in still other cases the development of dock work systems and the protections already available to dockworkers do not require the maintenance of registers. However, when the systems of registration are not yet developed and alternative protections not yet available, registers remain an indispensable tool for providing the protection afforded by these instruments.

234. In view of the developments which led up to the adoption of the Convention and the Recommendation and the diversity in local and national methods of organizing ports, the Committee fully appreciates that, for many countries today, certain of the measures envisaged by these instruments which were adopted in 1973 have lost their relevance. Among them, the Committee has noted situations where a permanent job and a minimum income are assured for dockworkers on the same terms as are applicable to other workers, both with regard to their employment (placement and vocational training) and their conditions of work (working time, wages, social security, etc.). Some of the reports examined show clearly that such conditions of employment and work

will be applied in a growing number of countries. While welcoming this development, the Committee nevertheless believes that it is necessary to guard against any risk of a void which might deprive these workers of the necessary regulatory framework where the situation has not changed. It is also important to bear in mind that in many countries, and in some ports in some countries, this modernization has not yet taken place.

235. It is the view of the Committee that Convention No. 137 and Recommendation No. 145, which are the only instruments addressing the questions of employment and conditions of work of dockworkers in detail, retain their relevance, both where the nature of dock work has not changed and in situations of transition. This occupation continues to require specific protection measures, and the instruments offer alternative means of addressing situations of, often massive, workforce reductions. The three major principles of permanent or regular employment, of a minimum income and of the system of registration prescribed by the Convention, have proven to be relevant, even in countries which have a highly developed mechanized port system requiring only a small number of dockworkers. The instruments also remain relevant to countries and ports which continue to remain outside the process of modernization, where the protection of the workers through the application of the instruments remains essential. Moreover, the need to adapt to the changes, as foreseen in the instruments, is of the greatest importance for all dockworkers affected by port reforms.

236. Many countries are now aware of the importance of efficient national ports in facilitating trade and thereby contributing decisively to the development of their economies. The Committee is of the opinion that the issue of dockworkers therefore deserves greater attention at the international level in view of the fundamental role that can be played by the port industry. The Committee hopes that the ILO will retain its essential role in establishing the needs and developing activities in this regard. It encourages the continuation of technical cooperation that the Office is providing to States and ports to identify and resolve the problems arising out of structural adjustment, establish effective machinery for collective bargaining and the settlement of disputes, revise regulations and promote the ratification and application of the respective instruments. In this regard, the Committee welcomes the fact that the Governing Body has selected the proposal for a general discussion at a future session of the Conference based on the integrated approach and concerning work in ports among the subjects on which the pace of research work should be accelerated.[2]

237. With regard to ratification prospects for Convention No. 137, the situation in many countries is such that certain policies, needed to achieve

[2] See para. 85 above.

specific objectives, may contain minor discrepancies with the requirements of the Convention. The governments of those countries therefore consider that they are unable to ratify the Convention. The low number of ratifications of the Convention does not alone constitute sufficient reason to call for revision. The Committee also believes that a large number of governments and employers' and workers' organizations may not fully appreciate the flexibility contained in the Convention, which has been emphasized in the presentation of the instruments and highlighted throughout this General Survey.

238. Finally, the Committee wishes to emphasize that one of the essential aspects of the two instruments on dock work which it has just examined is in strengthening the contribution of international labour standards to the universal recognition of the need to develop overall strategies encompassing guidance, full employment, vocational training and the close association of the social partners to confront the problems related to structural adjustment and the transformations of a global economy that has become interdependent.

APPENDIX I

TEXTS OF CONVENTION NO. 137
AND RECOMMENDATION NO. 145

Convention concerning the Social Repercussions of New Methods of Cargo Handling in Docks, 1973 (No. 137)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-eighth Session on 6 June 1973, and

Considering that important changes have taken place and are taking place in cargo-handling methods in docks – such as the adoption of unit loads, the introduction of roll-on roll-off techniques and the increase of mechanisation and automation – and in the pattern of movement of freight, and that such changes are expected to become more widespread in the future, and

Considering that such changes, by speeding up freight movements, reducing the time spent by ships in ports and lowering transport costs, may benefit the economy of the country concerned as a whole and contribute to the raising of the standard of living, and

Considering that such changes also involve considerable repercussions on the level of employment in ports and on the conditions of work and life of dockworkers, and that measures should be adopted to prevent or to reduce the problems consequent thereon, and

Considering that dockworkers should share in the benefit secured by the introduction of new methods of cargo handling and that, accordingly, action for the lasting improvement of their situation, by such means as regularisation of employment and stabilisation of income, and other measures relating to their conditions of work and life, as well as to safety and health aspects of dock work, should be planned and taken concurrently with the planning and introduction of new methods, and

Having decided upon the adoption of certain proposals with regard to social repercussions of new methods of cargo handling (docks), which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fifth day of June of the year one thousand nine hundred and seventy-three the following Convention, which may be cited as the Dock Work Convention, 1973:

Article 1

1. This Convention applies to persons who are regularly available for work as dockworkers and who depend on their work as such for their main annual income.

2. For the purpose of this Convention the terms "dockworkers" and "dock work" mean persons and activities defined as such by national law or practice. The organisations of employers and workers concerned shall be consulted on or otherwise participate in the establishment and revision of such definitions. Account shall be taken in this connection of new methods of cargo handling and their effect on the various dockworker occupations.

Article 2

1. It shall be national policy to encourage all concerned to provide permanent or regular employment for dockworkers in so far as practicable.

2. In any case, dockworkers shall be assured minimum periods of employment or a minimum income, in a manner and to an extent depending on the economic and social situation of the country and port concerned.

Article 3

1. Registers shall be established and maintained for all occupational categories of dockworkers, in a manner to be determined by national law or practice.

2. Registered dockworkers shall have priority of engagement for dock work.

3. Registered dockworkers shall be required to be available for work in a manner to be determined by national law or practice.

Article 4

1. The strength of the registers shall be periodically reviewed, so as to achieve levels adapted to the needs of the port.

2. Any necessary reduction in the strength of a register shall be accompanied by measures designed to prevent or minimise detrimental effects on dockworkers.

Article 5

In order to secure the greatest social advantage of new methods of cargo handling, it shall be national policy to encourage co-operation between employers or their organisations, on the one hand, and workers' organisations, on the other hand, in improving the efficiency of work in ports, with the participation, as appropriate, of the competent authorities.

Article 6

Each Member shall ensure that appropriate safety, health, welfare and vocational training provisions apply to dockworkers.

Article 7

The provisions of this Convention shall, except in so far as they are otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations.

Article 8

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 9

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 10

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 11

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 12

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 13

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 14

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 10 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 15

The English and French versions of the text of this Convention are equally authoritative.

Recommendation concerning the Social Repercussions of New Methods of Cargo Handling in Docks, 1973 (No. 145)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-eighth Session on 6 June 1973, and

Considering that important changes have taken place and are taking place in cargo-handling methods in docks – such as the adoption of unit loads, the introduction of roll-on roll-off techniques and the increase of mechanisation and automation – and in the pattern of movement of freight, and that such changes are expected to become more widespread in the future, and

Considering that such changes, by speeding up freight movements, reducing the time spent by ships in ports and lowering transport costs, may benefit the economy of the country concerned as a whole and contribute to the raising of the standard of living, and

Considering that such changes also involve considerable repercussions on the level of employment in ports and on the conditions of work and life of dockworkers, and that measures should be adopted to prevent or to reduce the problems consequent thereon, and

Considering that dockworkers should share in the benefits secured by the introduction of new methods of cargo handling and that, accordingly, action for the lasting improvement of their situation, by such means as regularisation of employment and stabilisation of income, and other measures relating to their conditions of work and life, as well as to safety and health aspects of dock work, should be planned and taken concurrently with the planning and introduction of new methods, and

Having decided upon the adoption of certain proposals with regard to social repercussions of new methods of cargo handling (docks), which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Dock Work Convention, 1973,

adopts this twenty-fifth day of June of the year one thousand nine hundred and seventy-three the following Recommendation, which may be cited as the Dock Work Recommendation, 1973:

I. SCOPE AND DEFINITIONS

1. Except as otherwise provided in Paragraph 36, this Recommendation applies to persons who are regularly available for work as dockworkers and who depend on their work as such for their main annual income.

2. For the purpose of this Recommendation the terms "dockworkers" and "dock work" mean persons and activities defined as such by national law or practice. The organisations of employers and workers concerned should be consulted on or otherwise participate in the establishment and revision of such definitions. Account should be taken

in this connection of new methods of cargo handling and their effect on the various dockworker occupations.

II. THE IMPACT OF CHANGES IN CARGO-HANDLING METHODS

3. In each country and, as appropriate, each port, the probable impact of changes in cargo-handling methods, including the impact on the employment opportunities for, and the conditions of employment of, dockworkers, as well as on the occupational structure in ports, should be regularly and systematically assessed, and the action to be taken in consequence systematically reviewed, by bodies in which representatives of the organisations of employers and workers concerned and, as appropriate, of the competent authorities participate.

4. The introduction of new methods of cargo handling and related measures should be co-ordinated with national and regional development and manpower programmes and policies.

5. For the purposes set out in Paragraphs 3 and 4, all relevant information should be collected continuously, including in particular –

(a) statistics of freight movement through ports, showing the methods of handling used;

(b) flow charts showing the origin and the destination of the main streams of freight handled, as well as the points of assembly and dispersion of the contents of containers and other unit loads;

(c) estimates of future trends, if possible similarly presented;

(d) forecasts of manpower required in ports to handle cargo, taking account of future developments in methods of cargo handling and in the origin and destination of the main streams of freight.

6. As far as possible, each country should adopt those changes in the methods of handling cargo which are best suited to its economy, having regard in particular to the relative availability of capital, especially foreign exchange, and of labour, and to inland transport facilities.

III. REGULARISATION OF EMPLOYMENT AND INCOME

A. Permanent or Regular Employment

7. In so far as practicable, permanent or regular employment should be provided for all dockworkers.

B. Guarantees of Employment or Income

8. (1) Where permanent or regular employment is not practicable, guarantees of employment and/or income should be provided, in a manner and to an extent depending on the economic and social situation of the country and port concerned.

(2) These guarantees might include any or all of the following:

(a) employment for an agreed number of hours or shifts per year, per month or per week, or pay in lieu thereof;

(b) attendance money, payable for being present at calls or otherwise available for work when no employment is obtained, under a scheme to which no financial contribution from the dockworkers is required;

(c) unemployment benefit when no work is available.

9. Positive steps should be taken by all concerned to avert or minimise as far as possible any reduction of the workforce, without prejudice to the efficient conduct of dock work operations.

10. Adequate provision should be made for giving dockworkers financial protection in case of unavoidable reduction of the workforce by such means as –

(a) unemployment insurance or other forms of social security;

(b) severance allowance or other types of separation benefits paid by the employers;

(c) such combination of benefits as may be provided for by national laws or regulations, or collective agreements.

C. Registration

11. Registers should be established and maintained for all occupational categories of dockworkers, in a manner determined by national law or practice, in order to –

(a) prevent the use of supplementary labour when the work available is insufficient to provide an adequate livelihood to dockworkers;

(b) operate schemes for the regularisation of employment or stabilisation of earnings and for the allocation of labour in ports.

12. The number of specialised categories should be reduced and their scope altered as the nature of the work changes and as more dockworkers become able to carry out a greater variety of tasks.

13. The distinction between work on board ship and work on shore should be eliminated, where possible, with a view to achieving greater interchangeability of labour, flexibility in allocation and efficiency in operations.

14. Where permanent or regular employment is not available for all dockworkers, the registers should take the form of either –

(a) a single register; or

(b) separate registers for –

(i) those in more or less regular employment;

(ii) those in a reserve pool.

15. No person should normally be employed as a dockworker unless he is registered as such. Exceptionally, when all available registered dockworkers are employed, other workers may be engaged.

16. The registered dockworker should make himself available for work in a manner determined by national law or practice.

D. Adjusting the Strength of the Registers

17. The strength of the registers should be periodically reviewed by the parties concerned, so as to achieve levels adequate, but not more than adequate, to the needs of the port. In such reviews, account should be taken of all relevant factors and in particular the long-term factors such as the changing methods of cargo handling and changing trends in trade.

18. (1) Where the need for particular categories of dockworkers decreases, every effort should be made to retain the workers concerned in jobs within the port industry by retraining them for work in other categories; the retraining should be provided well in advance of any anticipated change in the methods of operation.

(2) If reduction in the overall strength of a register becomes unavoidable, all necessary efforts should be made to help dockworkers to find employment elsewhere through the provision of retraining facilities and the assistance of the public employment services.

19. (1) In so far as practicable, any necessary reduction in the strength of a register should be made gradually and without recourse to termination of employment. In this respect, experience with personnel planning techniques at the level of the undertaking can be usefully applied to ports.

(2) In determining the extent of the reduction, regard should be had to such means as –

(a) natural wastage;

(b) cessation of recruitment, except for workers with special skills for which dockworkers already registered cannot be trained;

(c) exclusion of men who do not derive their main means of livelihood from dock work;

(d) reducing the retirement age or facilitating voluntary early retirement by the grant of pensions, supplements to state pensions, or lump-sum payments;

(e) permanent transfer of dockworkers from ports with excess of dockworkers to ports with shortage of such workers, wherever the situation warrants and subject to collective agreements and to the agreement of the workers concerned.

(3) Termination of employment should be envisaged only after due regard has been had to the means referred to in subparagraph (2) of this Paragraph and subject to whatever guarantees of employment may have been given. It should be based as far as possible on agreed criteria, should be subject to adequate notice, and should be accompanied by payments as set out in Paragraph 10.

E. Allocation

20. Except where permanent or regular employment with a particular employer exists, systems of allocation should be agreed upon which –

(a) subject to the provisions of Paragraphs 11, 15 and 17, provide each employer with the labour required to secure a quick turn-round of ships, or, in case of shortage, a fair share of such labour consistent with any established system of priorities;

(b) provide each registered dockworker with a fair share of available work;

(c) reduce to a minimum the necessity for attending calls for selection and allocation to a job and the time required for this purpose;

(d) ensure that, so far as practicable and subject to the necessary rotation of shifts, dockworkers complete a task begun by them.

21. Subject to conditions to be prescribed by national laws or regulations or collective agreements, the transfer of dockworkers in the regular employment of one employer to temporary work with another should be permitted when required.

22. Subject to conditions to be prescribed by national laws or regulations or collective agreements, the temporary transfer of dockworkers on a voluntary basis from one port to another should be permitted when required.

IV. LABOUR-MANAGEMENT RELATIONS

23. Discussions and negotiations between employers and workers concerned should aim not merely at settlement of current issues such as wages and conditions of work, but at an overall arrangement encompassing the various social measures required to meet the impact of new methods of cargo handling.

24. The existence of organisations of employers and of dockworkers established in accordance with the principles of the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949, able freely to enter into negotiations and to ensure the execution of agreements arrived at, should be recognised as being important for this purpose.

25. Where it does not already exist, appropriate joint industrial machinery should be set up with a view to creating a climate of confidence and co-operation between dockworkers and employers in which social and technical change can be brought about without tension or conflict and grievances promptly settled in accordance with the Examination of Grievances Recommendation, 1967.

26. Employers' and workers' organisations, together as appropriate with the competent authorities, should participate in the application of the social measures required, and in particular in the operation of schemes for the regularisation of employment or stabilisation of earnings.

27. Effective policies of communication between employers and dockworkers and between the leaders of workers' organisations and their members should be established in accordance with the Communications within the Undertaking Recommendation, 1967, and implemented by all possible means at all levels.

V. ORGANISATION OF WORK IN PORTS

28. In order to secure the greatest social advantage of new methods of cargo handling, agreements should be concluded between employers or their organisations, on the one hand, and workers' organisations, on the other hand, with a view to their co-operation in improving the efficiency of work in ports, with the participation, as appropriate, of the competent authorities.

29. The measures to be covered by such agreements might include –

(a) the use of scientific knowledge and techniques concerning the work environment with particular reference to conditions in ports;

(b) comprehensive vocational training schemes, including training in safety measures;

(c) mutual efforts to eliminate outdated practices;

(d) increased flexibility in the deployment of dock labour between hold and hold, ship and ship, and ship and shore, and between shore jobs;

(e) recourse, where necessary, to shift work and weekend work;

(f) work organisation and training designed to enable dockworkers to carry out several related tasks;

(g) the adaptation of the strength of gangs to agreed needs, with due regard to the necessity of ensuring reasonable rest periods;

(h) mutual efforts to eliminate unproductive time as far as practicable;

(i) provision for the effective use of mechanical equipment, subject to the observance of relevant safety standards and the weight restrictions required by the certified safe working capacity of the machine.

30. Such measures should be accompanied by agreements concerning the regularisation of employment or stabilisation of earnings and by the improvements in conditions of work referred to in the following Part of this Recommendation.

VI. CONDITIONS OF WORK AND LIFE

31. Laws and regulations concerning safety, health, welfare and vocational training applicable to industrial undertakings should be effectively applied in ports, with such technical variations as may be necessary; there should be adequate and qualified inspection services.

32. Standards as regards hours of work, weekly rest, holidays with pay and similar conditions should be not less favourable for dockworkers than for the majority of workers in industrial undertakings.

33. Measures should be adopted in regard to shift work, which include –

(a) not placing the same worker on consecutive shifts, except within limits established by national laws or regulations or collective agreements;

(b) special compensation for the inconvenience caused to the worker by shift work, including weekend work;

(c) fixing an appropriate maximum duration and an appropriate timing of shifts, regard being had to local circumstances.

34. Where new methods of cargo handling are introduced and where tonnage rates or other forms of payment by results are in use, steps should be taken to review and, where necessary, revise the methods and the scales of pay. Where possible, the earnings of the dockworkers should be improved as a result of the introduction of the new methods of cargo handling.

35. Appropriate pension and retirement schemes should be introduced where they do not already exist.

VII. MISCELLANEOUS PROVISIONS

Appropriate provisions of this Recommendation should, as far as practicable, also be applied to occasional and to seasonal dockworkers in accordance with national law and practice.

APPENDIX II

RATIFICATIONS OF THE DOCK WORK CONVENTION, 1973 (NO. 137)

Adopted at the 58th Session of the ILC	Date of entry into force: 24.07.1975
States	**Ratification registered**
Afghanistan	16.05.1979
Australia	25.06.1974
Brazil	12.08.1994
Costa Rica	03.07.1975
Cuba	07.01.1975
Egypt	04.08.1982
Finland	13.01.1976
France	15.02.1977
Guyana	10.01.1983
Iraq	09.03.1978
Italy	23.06.1981
Kenya	09.04.1979
Netherlands	14.09.1976
Nicaragua	01.10.1981
Norway	21.10.1974
Poland	22.02.1979
Portugal	09.01.1981
Romania	28.10.1975
Spain	22.04.1975
Sweden	24.07.1974
United Republic of Tanzania	30.05.1983
Uruguay	31.07.1980

APPENDIX III

TABLE OF REPORTS DUE AND RECEIVED ON THE DOCK WORK CONVENTION (NO. 137) AND RECOMMENDATION (NO. 145), 1973 (Article 19 of the Constitution)

Article 19 of the Constitution of the International Labour Organization provides that Members shall "report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body" on the position of their law and practice in regard to the matters dealt with in unratified Conventions and Recommendations. The obligations of Members as regards Conventions are laid down in paragraph 5(e) of the abovementioned Article. Paragraph 6(d) deals with Recommendations, and paragraph 7(a) and (b) deals with the particular obligations of federal States. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 19, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 218th (November 1981) Session, the Governing Body decided to discontinue the publication of summaries of reports on unratified Conventions and on Recommendations and to publish only a list of reports received, on the understanding that the Director-General would make available for consultation at the Conference the originals of all reports received and that copies of reports would be available to members of delegations on request.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

From now on, reports received under article 19 of the Constitution appear in simplified form in a table annexed to Report III (Part 1B) of the Committee of Experts on the Application of Conventions and Recommendations.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

The reports which are listed below refer to the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973.

Member States	Convention No. 137	Recommendation No. 145
Afghanistan	*Ratified*	–
Albania	–	–
Algeria	Received	Received
Angola	–	–
Antigua and Barbuda	–	–
Argentina	Received	Received
Armenia	–	–
Australia	*Ratified*	Received
Austria	Received	Received
Azerbaijan	–	–
Bahamas	–	–
Bahrain	Received	Received
Bangladesh	Received	Received
Barbados	Received	Received
Belarus	Received	Received
Belgium	Received	Received
Belize	–	–
Benin	Received	Received
Bolivia	–	–
Bosnia and Herzegovina	–	–
Botswana	Received	Received
Brazil	*Ratified*	Received
Bulgaria	Received	Received
Burkina Faso	Received	Received
Burundi	Received	Received
Cambodia	–	–
Cameroon	–	–
Canada	Received	Received
Cape Verde	–	–
Central African Republic	–	–
Chad	Received	–
Chile	Received	Received
China	–	–
Colombia	Received	Received
Comoros	–	–
Congo	–	–
Costa Rica	*Ratified*	Received
Côte d'Ivoire	–	–

Member States	Convention No. 137	Recommendation No. 145
Croatia	Received	Received
Cuba	*Ratified*	Received
Cyprus	–	–
Czech Republic	Received	Received
Democratic Republic of the Congo	–	–
Denmark	Received	Received
Djibouti	–	–
Dominica	–	–
Dominican Republic	–	–
Ecuador	Received	Received
Egypt	*Ratified*	Received
El Salvador	Received	Received
Equatorial Guinea	–	–
Eritrea	–	–
Estonia	Received	Received
Ethiopia	Received	–
Fiji	–	–
Finland	*Ratified*	Received
France	*Ratified*	Received
Gabon	–	–
Gambia	Received	Received
Georgia	–	–
Germany	Received	Received
Ghana	Received	Received
Greece	Received	Received
Grenada	–	–
Guatemala	–	–
Guinea	–	–
Guinea-Bissau	–	–
Guyana	*Ratified*	–
Haiti	–	–
Honduras	–	–
Hungary	Received	Received
Iceland	–	–
India	Received	Received
Indonesia	Received	Received
Islamic Republic of Iran	–	–
Iraq	*Ratified*	–

Member States	Convention No. 137	Recommendation No. 145
Ireland	–	–
Israel	–	–
Italy	*Ratified*	Received
Jamaica	–	–
Japan	Received	Received
Jordan	Received	Received
Kazakhstan	–	–
Kenya	*Ratified*	–
Kiribati	–	–
Republic of Korea	Received	Received
Kuwait	Received	Received
Kyrgyzstan	–	–
Lao People's Democratic Republic	–	–
Latvia	–	–
Lebanon	Received	Received
Lesotho	Received	Received
Liberia	–	–
Libyan Arab Jamahiriya	–	–
Lithuania	Received	Received
Luxembourg	Received	Received
Madagascar	Received	Received
Malawi	–	–
Malaysia	–	–
Mali	–	–
Malta	Received	Received
Mauritania	Received	–
Mauritius	Received	Received
Mexico	Received	Received
Republic of Moldova	Received	Received
Mongolia	–	–
Morocco	Received	Received
Mozambique	Received	Received
Myanmar	Received	Received
Namibia	Received	Received
Nepal	–	–
Netherlands	*Ratified*	–
New Zealand	Received	Received
Nicaragua	*Ratified*	Received

Member States	Convention No. 137	Recommendation No. 145
Niger	Received	Received
Nigeria	–	–
Norway	*Ratified*	Received
Oman	Received	Received
Pakistan	Received	Received
Panama	Received	Received
Papua New Guinea	–	–
Paraguay	–	–
Peru	Received	Received
Philippines	Received	Received
Poland	*Ratified*	Received
Portugal	*Ratified*	Received
Qatar	Received	Received
Romania	*Ratified*	Received
Russian Federation	Received	Received
Rwanda	Received	Received
Saint Kitts and Nevis	–	–
Saint Lucia	–	–
Saint Vincent and the Grenadines	–	–
San Marino	Received	Received
Sao Tome and Principe	–	–
Saudi Arabia	Received	Received
Senegal	–	–
Seychelles	Received	Received
Sierra Leone	–	–
Singapore	Received	Received
Slovakia	–	–
Slovenia	Received	Received
Solomon Islands	–	–
Somalia	–	–
South Africa	Received	Received
Spain	*Ratified*	Received
Sri Lanka	–	–
Sudan	–	–
Suriname	Received	Received
Swaziland	Received	Received
Sweden	*Ratified*	Received
Switzerland	Received	Received

Member States	Convention No. 137	Recommendation No. 145
Syrian Arab Republic	Received	Received
Tajikistan	–	–
United Republic of Tanzania	*Ratified*	–
Thailand	Received	Received
The former Yugoslav Republic of Macedonia	–	–
Togo	–	–
Trinidad and Tobago	–	–
Tunisia	Received	Received
Turkey	Received	Received
Turkmenistan	–	–
Uganda	–	–
Ukraine	–	–
United Arab Emirates	Received	Received
United Kingdom	Received	Received
United States	Received	Received
Uruguay	*Ratified*	Received
Uzbekistan	–	–
Venezuela	–	–
Viet Nam	–	–
Yemen	Received	Received
Yugoslavia	–	–
Zambia	–	–
Zimbabwe	–	–